

SBG Management Services, Inc.
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October 18, 2017

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17105-3265

**Re: SBG Response and Motion PGW's Supplemental Petition For Rehearing of the
Commission's December 8, 2016 Final Order in the matters of:
SBG Management Services, Inc./Colonial Garden Realty Co., L.P v. PGW.; Docket No. C-
2012-2304183 and SBG Management Services, Inc./Simon Garden Realty Co., L.P. v. PGW;
Docket No. C-2012-2304324**

Dear Secretary Chiavetta:

Please accept for filing SBG's Response and Motion To Deny and Strike the Rebuttal and Rejoinder Testimony of Bernard Cummings and Attached Exhibits to PGW's Supplemental Petition for Rehearing of the Commission's December 8, 2016 Final Order which was filed by PGW on October 3, 2017.

Sincerely yours,


Donna S. Ross, Esquire

Cc: Certificate of Service
Hon. Eranda Vero, ALJ
Daniel Clearfield, Esq.
Laureto Farinas, Esq.

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." 1

**BEFORE THE
PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

SBG Management Services, Inc./
Colonial Garden Realty Co., L.P.

v.

C-2012-2304183

Philadelphia Gas Works

SBG Management Services, Inc./
Simon Garden Realty Co., L.P.

v.

C-2012-2304324

Philadelphia Gas Works

NOTICE TO PLEAD

To:	Daniel Clearfield, Esq.	Laureto Farinas, Esq.
	Karen O. Moury, Esq.	PGW
	Carl Shultz, Esq.	800 W. Montgomery Ave, 4 th Fl
	Eckert Seamans Cherin & Mellott, LLC	Philadelphia, PA 19122
	213 Market Street, 8 th Fl	
	Harrisburg, PA 17101	

Pursuant to 52 Pa. Code § 5.101(b), you are hereby notified to file a written response to the enclosed Motion to Strike/Deny Filed by SBG Management Services, Inc. et al in the above-captioned matter. You must file your response within twenty (20) days from the date of service of this notice. If you do not file a written response to this Motion within twenty (20) days of service, the Pennsylvania Public Utility Commission may rule on this Motion without further input.

File with:

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

Certificate of Service Attached hereto to all parties

Date: 10/18/2017

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

In the Matter of:

SBG's Response to PGW's Supplemental Petition for Reconsideration/Rehearing

In the Matters of: SBG Management Services, Inc./Colonial Garden Realty, LP v. Philadelphia Gas Works, Docket No. C-2012-2304183 and SBG Management Services, Inc./Simon Gardens Realty, LP v. Philadelphia Gas Works, Docket No. C-2012-2304324

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 Email/First Class, U.S. mail 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.

Honorable ALJ Eranda Vero
PA PUC
801 Market Street, Suite 4063
Philadelphia, PA 19107
For Pa PUC

Mr. Daniel Clearfield, Esquire
Ms. Karen Moury, Esquire
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For PGW

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PGW
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For PGW

Mr. Phil Pulley and Ms. Kathy Treadwell
For SBG

Hon. Rosemary Chiavetta, Secretary
PA PUC
400 North Street, 2nd Fl
Harrisburg, PA 17105-3265
For PA PUC

Date: 10/18/2017

By: 

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**BEFORE THE
PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

SBG Management Services, Inc./
Colonial Garden Realty Co., L.P.

v.

C-2012-2304183

Philadelphia Gas Works

SBG Management Services, Inc./
Simon Garden Realty Co., L.P.

v.

C-2012-2304324

Philadelphia Gas Works

**SBG MANAGEMENT SERVICES, INC/SIMON GARDEN REALTY CO. L.P. AND
COLONIAL GARDEN REALTY CO., L.P.'S MOTION TO STRIKE and/or DISMISS
THE SUPPLEMENTAL PETITION FOR REHEARING OF THE COMMISSION'S
DECEMBER 8, 2016 FINAL ORDER AND TO STRIKE/DECLINE REVIEW OF THE
ATTACHED UNRELATED TESTIMONY AND ATTACHED PROPOSED EXHIBITS
THERETO SUBMITTED BY PHILADELPHIA GAS WORKS IDENTIFIED AS
ATTACHMENT A: THE REBUTTAL TESTIMONY OF PGW WITNESS, BERNARD L.
CUMMINGS IN DOCKET NO. R-2017-2586783, EXHIBITS BLC-1, BLC-2, BLC-3,
BLC-4 AND ATTACHMENT B: REJOINDER TESTIMONY OF PGW WITNESS,
BERNARD L. CUMMINGS IN DOCKET NO. R-2017-2586783**

Respectfully Submitted By,

Donna S. Ross, Esquire
Attorney for SBG Management Services, Inc./
Colonial Garden Realty Co. L.P. and Simon Garden Realty Co. L.P.
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**SBG'S MOTION TO DENY/STRIKE PGW'S SUPPLEMENTAL PETITION AND
ATTACHED TESTIMONY AND EXHIBITS FILED ON OCTOBER 3, 2017**

Pursuant to Section 5.103 of the Pennsylvania Public Utility Commission's regulations, 52 Pa. Code §5.103, Complainants', SBG Management Services Inc./Colonial Garden Realty Co., L.P. and Simon Garden Realty Co., L.P. ("SBG" or Complainants), by and through their counsel, Donna S. Ross, Esquire, file this Motion to Strike/Deny ("Motion") to deny on the merits Respondent's ("PGW" or Respondent) Supplemental Petition for Rehearing filed ten months (10) after the Commission's Final Order Dated December 8, 2016. SBG requests the Commission deny and/or strike the admission into the record or review thereof, PGW's attached Exhibits: BLC -1, BLC – 2, BLC-3, BLC-4 ("Exhibits") and the Rebuttal and Rejoinder testimony ("Testimony") of PGW witness, Bernard L. Cummings **from the unrelated General Base Rate case docket R-2017-2586783**. PGW has submitted its Supplemental Petition and accompanying exhibits and testimony to the Commission for review pursuant to Section 703(f) of the Public Utility Code (66 Pa.C.S. § 703(f) and Section 5.572 of the Pennsylvania Public Utility Commission's ("Commission") regulations at 52 Pa.Code § 5.572, which requires petitions be filed within fifteen (15) days of entry of the Commission's final order, which in this case was filed December 8, 2016. In support of its Motion, SBG et al. states as follows:

Introduction

1. By this Motion, SBG seeks to strike and deny the relief requested in PGW's Supplemental Petition for Rehearing and strike and/or deny the admission or consideration of the attached Exhibits (BLC 1, 2, 3 and 4) and the Rebuttal and Rejoinder Testimony of PGW witness, Bernard L. Cummings from a General Base Rate proceeding docketed at R-2017-2586783, a proceeding

SBG was not a party in interest and nor apprised of *any* the proceedings. SBG respectfully moves this Commission to grant this motion on the following grounds: (i) first and foremost, SBG was not a party in interest and had no notice of the 2017 Rate proceeding docketed at R-2017-2586783, therefore, it is a violation of SBG's rights under the 14th Amendment equal protection clause and a denial of due process for the Commission to consider testimony and exhibits from an unrelated proceeding to which SBG had no notice; was not a interest party or participant; where SBG did not have the ability to cross-examine witnesses; and was beyond the scope of evidence contained in the now closed record¹; (ii) no foundation or authentication has been laid for the Rebuttal and Rejoinder Testimony of Bernard L. Cummings who was last subject to cross-examination by SBG counsel in March 2015; (iii) the Exhibits and Testimony attached to the Petition contain extraneous information that is irrelevant and incomplete pertaining to the issues before the Commission to which SBG is a party. PGW's Supplemental Petition is being inappropriately and frivolously bootstrapped to the SBG complaints matters and is an untimely attempt to supplement the record to negate the findings of the Commission's Final Order dated December 8, 2016. Both the Cummings Testimony and the Exhibits (which includes partial, undeveloped excerpts of answers to Roger Colton's discovery Interrogatories in the base rate action which SBG did not propound) contain uncorroborated hearsay, is incomplete, taken out of context of the proceedings and highly prejudicial to SBG's case; (iv) PGW is using the subsequent Testimony and Exhibits from the Rate Case to get a second "bite at the apple" to rehabilitate Bernard Cummings testimony given at the 2013 and 2015 hearings with SBG; and (v) any probative value of the Cummings Testimony and the Exhibits is outweighed by the danger of unfair prejudice, confusion and conflation of the issues currently before the Commission for review.

¹ The record closed June 30, 2015 in the SBG consolidated cases.

2. The SBG consolidated cases were filed in 2012. Following three and one-half years (3 ½ years) of intense litigation which included very contentious and extensive discovery, complainants' multiple motions to compel PGW to produce discovery, numerous days of evidentiary hearings, the submission of briefs and reply briefs, the Recommended Initial Decision (I.D.) of Administrative Law Judge (ALJ) Eranda Vero, was issued on September 17, 2015. PGW filed timely Exceptions to the Initial Decision. On December 8, 2016, the Commission issued its Final Order. PGW filed a timely Petition for Reconsideration on December 23, 2016 and five days later on December 28, 2016, the Commission granted PGW's Petition for Reconsideration. SBG filed its response to PGW's Petition for Reconsideration on January 3, 2017. Other than PGW's Petition for Reconsideration, no other motions or petitions were filed by the parties and the record has remained closed until October 3, 2017, when PGW filed its Supplemental Petition for Rehearing of *the Commission's Final Order, December 8, 2016* with the aforementioned testimony from the unrelated Rate (R-2017-2586783) case and Exhibits attached thereto.

3. Since the record closed June 30, 2015, neither party has requested that the record be left opened or reopened to present additional evidence.

4. PGW has filed its Supplemental Petition for Rehearing pursuant to Section 703(f) of the Public Utility Code² and 52 Pa.Code §5.572³ of the Commission's regulations. Noted on page 1

² 66 Pa.C.S. §703(f) – **Rehearing.** –After an order has been made by the commission, any party to the proceedings may, **within 15 days** after the service of the order, apply for a rehearing in respect of any matters determined in such proceedings and specified in the application for rehearing, and the commission **may** grant and hold such rehearing on such matters. No application for a rehearing shall in anywise operate as a supersedeas, or in any manner stay or postpone the enforcement of any existing order, except as the commission may, by order, direct. If the application be granted the commission may affirm, rescind, or modify its original order.

³ § 5.572. **Petitions for relief.** (a) Petitions for rehearing, re-argument, reconsideration, clarification, rescission, amendment, supersedeas or the like must be in writing and specify, in numbered paragraphs, the findings or orders involved, and the points relied upon by petitioner, with appropriate record references and specific requests for the findings or orders desired. (b) A copy of every petition covered by subsection (a) shall be served upon each party to the proceeding. (c) **Petitions for reconsideration, rehearing, re-argument, clarification, supersedeas or others shall be filed within 15 days after the Commission order involved is entered or otherwise becomes final.** (d) Petitions for rescission or amendment may be filed at any time according to the requirements of section 703(g) of the act (relating to fixing of hearings). (e) Answers to a petition covered by subsection (a) shall be filed and served within 10 days after service of a petition. (f) Subsections (a)—(e) supersede 1 Pa. Code § 35.241 (relating to application for rehearing or reconsideration). (*Emphasis added*).

of the Supplemental Petition, PGW's Petition filed herein only addresses "the discrete sections of the SBG Final Order dealing with the application of partial payments to prior basic service. SBG Final Order at 33-45, 96-99."

5. SBG did not file a Petition to Intervene in the Base Rate proceeding, nor did SBG have any knowledge of the existence of the matters involved in the General Rate Increase Request proceeding docketed at R-2017-2586783. It is only through the October 3, 2017 filing of PGW's Supplemental Petition for Rehearing under the SBG consolidated dockets C-2012-2304183 and C-2012-2304554 where PGW attached PGW's witness, Bernard L. Cummings' Rebuttal and Rejoinder testimony and Exhibits BLC 1- 4 did SBG become aware of the existence of the ongoing Rate proceeding.

6. SBG contends that PGW's Supplemental Petition is extremely untimely (filed outside of the 15 day rule and only in response to the ALJ decision rendered in the Base Rate action currently before the Commission. It would be highly prejudicial to SBG as a matter of law to allow PGW to submit testimony and exhibits from an unrelated proceeding more than two (2) years after the close of the record in the SBG cases.

7. PGW has not alleged that any of the information being offered to the Commission is new or novel, was newly discovered or otherwise unavailable prior to October 3, 2017 that warrants the Commission's review or consideration. If anything, PGW seeks to rehabilitate its witness, Vice President of Customer Service and Collections, Bernard L. Cummings' testimony from 2013 and 2015 and is wrongfully using the SBG complaint proceedings as a vehicle to further its agenda to obtain a rate increase from the Commission. Mr. Cummings was the Vice President of Customer Service and Collections when he testified in the 2013 and 2015 hearings and had extensive knowledge of the inner-workings of the PGW financial/accounting system during the SBG

proceedings. He actively participated in the SBG hearings, responded to discovery, testified at length, both on direct and under cross-examination, in those proceedings and did not rebut the testimony of Roger C. Colton and Jeremy Gabbell, SBG's expert witnesses or challenge SBG witness, Kathy Treadwell's testimony or schedules. Neither Cummings nor PGW have countered or denied a central issue to either matter before the Commission regarding the methodology and payment posting scheme regarding partial payments §56.24. PGW just does not agree with the result and the impact the illegal practice may have on the company. Moreover, at the August 26, 2013 hearing, in response to Attorney Boone's inquiry, "The authority to continue to charge 18 percent, where do you get that from?" Cummings responded, "[t]he 18 percent, I believe, is a tariff rate that we can charge...Or maybe the rate, **the highest rate that is applicable by state law, I believe.**" (SBG Main Brief, page 32; Tr. 8/26/2013 Hearing Test. Pg. 15, lines 5-11, 13-14).

8. PGW avers that the new evidence that warrants consideration in this Supplemental Petition is based upon the finding of the Administrative Law Judges ("ALJs") in the base rate proceeding that PGW's partial payment allocation practices are not just limited to the findings in the SBG consolidated matters but may warrant application to all customers, including residential customers. In addition, PGW would like the Commission to consider the alleged *adverse impact* of system-wide revisions to PGW's partial payment allocation practices. The Public Utility Code under 66 Pa.C.S. §§501, 503, 508 and 1301 require the Commission investigate and review rates and practices related to such rates in the interest of the public and to ensure utility practices are just and reasonable.

9. There is no evidence in the SBG matters or the Base Rate proceeding that refutes PGW's partial payment posting practices under 52 Pa. Code §56.24. PGW readily admits in both proceedings that it posts payments first to non-interest bearing debt, i.e. service charges and late fees before applying payments to interest bearing debt on prior balances. During the SBG proceeding, PGW did

not rebut Roger Colton's testimony, Jeremy Gabbell's testimony or challenge Kathy Treadwell's testimony and payment schedules entered into the record during the SBG hearings in 2015.

10. But for the SBG matters before the Commission, PGW would not have disclosed its payment scheme to the Commission or the general public and their illegal practices would not have been discovered. Despite being on notice from the evidence presented at the hearings held before the Commission, Judge Vero's Initial Decision issued in September 2015 and later from the Commission's Final Order of December 8, 2016, PGW has taken no action to correct its violations on the manner in which it applies payments to prior balances, especially when a partial payment is made.

11. The Commission's regulations regarding late payment charges (52 Pa. Code §56.22) and application of partial payments to prior balances (52 Pa. Code §56.24) have been in effect since 1978. During the SBG proceedings, PGW witnesses, Diane Rizzo and Bernard Cummings, testified that PGW's practice to first apply payments to services charges and late fees first before applying payments to remaining balances has been in existence for many years. Diane Rizzo testified that the practice has existed for at least thirty (30) years according to her recollection. Therefore, PGW's averment that the Commission's Order is a novelty for which its impact should be reconsidered or is tantamount to a new rule is without merit.

12. The issues presented in the SBG cases were of issues of first impression to the Commission. Prior to receiving the very nuanced evidence in the SBG case, PGW never disclosed or was forced to show its payment application schemes to patrons or the Commission. As Judge Vero noted in her Initial Decision, it was the very special circumstances that existed in SBG accounting analysis that the Commission could discern PGW's practice and manner of retiring debt, especially where there is a repeated partial payment scenario.

13. According to the Bernard Cummings' rebuttal testimony attached to Supplemental Petition, Mr. Cummings is the Vice President of Customer Service and Collections, graduated from the prestigious American University with a bachelor of science degree in Business Administration and has an MBA from the University of Michigan. Prior to his role as Vice President of Customer Service and Collections, he was PGW's Treasurer, one can assume that he is intimately familiar with PGW's financial accounting and collections practices. When reviewing the transcripts of the SBG proceeding, Cummings comes across as one who lacks basic knowledge of the financial inner workings of the organization. Given his illustrious educational and financial background, Cummings either feigned his lack of knowledge on the company's payment posting practices or is only now realizing the impact their illegal practice will have on future revenues of the company. Either way, Cummings' attempt to rehabilitate his testimony and insert his testimony from the Base Rate proceeding into the SBG case at this late date is highly prejudicial to SBG, untimely and should be disallowed or noted by the Commission as an adverse inference regarding his testimony in the proceeding.

Standard of Review

14. It is well settled that the Commission is not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corporation v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984). PGW's Petition was filed pursuant to 52 Pa. Code § 5.572, Petitions for Relief which encompass, *inter alia*, petitions for rehearing, re-argument and reconsideration. The applicable standard of review is set forth in *Duick v. Pennsylvania Gas and Water Co.*, Docket No. C-R0597001 *et al*, 56 Pa.P.U.C. 553, 559 (1982). Under *Duick*, petitions for reconsideration are likely to succeed **only when they raise "new and novel arguments", not previously heard or**

considerations that appear to have been overlooked or not addressed by the Commission. *Id.*

at 559. Where granting such relief may result in the disturbance of final orders, courts have held that such petitions for reconsideration or rehearing **should be granted judiciously and only under appropriate circumstances.** *West Penn Power Co. v. Pa. PUC*, 659 A.2d 1055 (Pa. Cmwlth. 1995), *pet. For allow. of app. den.*, No. 576 W.D., Allocatur Docket (April 9, 1996); *City of Pittsburgh v. PennDOT*, 490 Pa. 264, 416 A.2d 461 (1980). (*emphasis added*).

15. Pursuant to 52 Pa. Code § 5.572, Notes of Decisions, “[w]here the petitioners failed to raise new or novel arguments not previously considered by the Pennsylvania Public Utility Commission in the petition for reconsideration, they did not meet the established standard to warrant that the Commission reopen the proceeding.” *Pennsylvania Public Utility Commission v. PECO Energy Co.*, M-00960820, P.U.R. 4th Slip Opinion, (February 12, 1999).

16. The Public Utility Code (Code) establishes a party’s right to seek relief following the issuance of the Commission’s final decisions pursuant to Section 703(f) (Rehearing) and 703(g), 66 Pa. C.S. §§703(f) and 703(g). Such requests for relief must be consistent with the Commission’s regulations promulgated at 52 Pa. Code §5.572, relating to petitions for relief following the issuance of a final decision. **Under §5.572(c) Petitions for reconsideration, rehearing, reargument, clarification, supersedeas or others shall be filed within 15 days after the Commission order involved is entered or otherwise becomes final.** (*Emphasis added*).

17. PGW has filed their Supplemental Petition for Rehearing pursuant to §5.572 of the Commission’s regulations and §703(f) of the Public Utility Code. Pursuant to both §703(f) and §5.572(c), the Commission mandates that “any party to the proceedings may, within 15 days after the service of the order, apply for a rehearing in respect of any matters determined in such proceedings and specified in the application for rehearing...No application for a rehearing shall in

anywise operate as a supersedeas, or in any manner stay or postpone the enforcement of any existing order...”. PGW only filed this Supplemental Petition to avoid implementing the Commission’s directive to correct its payment posting scheme in relation to partial payments under §56.24 as determined in the SBG proceedings in 2015 and later reiterated by the ALJs who presided over the 2017 Base Rate Proceeding at docket number R-2017-2586873. Furthermore, there is no authority in the Public Utility code or the Commission’s regulations that allow for the filing of a Supplemental Petition for Rehearing under sections 703(f) and §5.572 after 15 days of the entry of a final order, let alone filing a Petition that attaches never before reviewed testimony and exhibits from another, unrelated proceeding in which the responding party (SBG) has not participated.

18. In *Pennsylvania Public Utility Commission v. The Columbia Water Company*, Docket No. R-2013-2360798, *Order Dated March 6, 2014*, the Commission denied reconsideration applying the standards for granting a petition as set forth in *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553 (1982) (*Duick*):

A petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the Court in the *Pennsylvania Railroad Company* case, wherein it was said that “[p]arties... cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them . . .” What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked by the Commission. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error.

56 Pa. P.U.C. at 559, citing *Pennsylvania Railroad Co. v. Pa. Public Service Commission*, 179 A. 850 (Pa. Super. 1935). Additionally, a petition for reconsideration is properly before the

Commission where it pleads newly discovered evidence that was not in existence or discoverable through the exercise of due diligence prior to the expiration of the time within which to file a petition for rehearing under the provisions of Subsection 703(g). *Id.* Accordingly, under the standards of *Duick*, a petition for reconsideration may properly raise any matter designed to convince this Commission that we should exercise our discretion to amend or rescind a prior order, in whole or in part. Such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations that appear to have been overlooked or not addressed by the Commission.

Also, it has been held that because a grant of relief on such petitions may result in the disturbance of final orders, reconsideration should be granted judiciously and only under appropriate circumstances. *West Penn Power v. Pa. PUC*, 659 A.2d 1055 (Pa. Cmwlth. 1995), *appeal denied*, 544 Pa. 619, 674 A.2d 1079 (1996); *City of Pittsburgh v. PennDOT*, 490 Pa. 264, 416 A.2d 461 (1980).

19. The Supplemental Petition raises no new arguments or novel theories of the case. Indeed, the Petition reiterates PGW’s position that it is entitled to maintain its illegal scheme and only serves to delay the Commission’s Order. PGW has not articulated any scintilla of a legal argument that would warrant good cause as to why their Supplemental Petition was filed nearly eleven (11) months after the Commission’s final order entered on December 8, 2016. Granted PGW did timely file their original Petition for Rehearing under §703 and §5.572 on December 23, 2016, but since the filing of that petition PGW did not seek an opportunity to reopen the record or add additional evidence until October 3, 2017. Moreover, PGW is now seeking to add incompetent hearsay testimony and submit incomplete, non-contextual partial evidence from a Base Rate proceeding into the SBG record, which is a clear violation of the Pennsylvania rules of evidence, civil procedure and administrative

procedure, not to mention impinges on SBG's constitutional rights to equal protection and due process afforded under the 14th Amendment.

20. SBG has never been a participant or party to the Base Rate action and should not be forced to respond to PGW's specious allegations, which have no authority or basis. PGW's Supplemental Petition along with the proposed exhibits and evidentiary attachments will only serve to distort the SBG record. Should the Commission grant rehearing the record is likely to become conflated and convoluted by extraneous testimony and exhibits which have not been deemed reliable and competent through cross examination, nor admitted into the closed record. SBG should not have to bear the legal expense and unnecessary delay caused by having to participate in yet another hearing before the Commission. There are no additional facts to be deduced or legal theories developed. Only a question of law needs to be decided by the Commission. SBG should not have to bear the burden of PGW's failings to serve its customer base just because PGW failed to appreciate the repercussions of having its illegal practices exposed by protracted litigation when it failed to respond to SBG's inquiries many years ago. Pursuant to §5.431(b) of the Commission's regulations, after the record is closed, additional matters may not be relied upon or accepted into the record unless for good cause shown by the presiding officer or the Commission upon Motion. PGW has not filed a Motion as per the rule for the Commission to consider the attached exhibits and Cummings' rebuttal and rejoinder testimony.

21. Section 332(a) of the Public Utility code⁴ provides that the party seeking relief from the Commission has the burden of proof. *Se-Ling Hosiery v. Margulies*, 364 Pa. 54, 70 A.2d 854 (1950). Furthermore, the decision of the Commission must be supported by substantial evidence in the record, 2 Pa.C.S. §704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept

⁴ 66 Pa.C.S. §332(a)

as adequate to support a conclusion. 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. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980). PGW admits its practice of zeroing out late fees and service agreement payments before applying partial payments to prior balances. SBG provided unrefuted testimony and evidence as to the impact PGW's payment posting practices has on its customer's accounts. PGW and SBG have been in litigation for more than five (5) years now and SBG made numerous inquiries for more than ten (10) years prior to filing suit before PGW was compelled to disclose its accounting schemes. The Commission is now fully apprised of PGW's payment posting practice and has found that PGW's actions are illegal and in violation of the Public Utility Code. When the language of a statute is free from ambiguity, any further deliberation as to its meaning is unwarranted. *See* Section 1921(b) of the Statutory Construction Act, 1 Pa.C.S. §1921(b); *Meier v. Maleski*, 670 A.2d 755 (Pa.Cmwth 1996), *aff'd*, 549 Pa. 176, 700 A.2d 1262 (1997). "Where there are no disputed questions of fact and the issue to be decided is purely one of law or policy, a case may be disposed of without resort to an evidentiary hearing" *Dee-Dee Cab, Inc. v. Pennsylvania PUC*, No. 1267 C.D. 2002, 817 A.2d 593 (Pa. Cmwth 2003) *quoting* *Cresco, Inc. v. Pennsylvania Public Utility Commission*, 622 A.2d 997 (Pa. Cmwth. 1993). PGW was afforded many opportunities to challenge SBG's theories and failed to disclose their accounting methodology because it was to the company's advantage and to the detriment of its customers. If the Commission grants PGW's petition currently before them, the result will be to trample on SBG's equal protection and due process rights just as PGW has done to them for the last fifteen (15) years.

Equal Protection and Due Process Requires

PGW's Petition Be Denied and Attachments/Exhibits Stricken

22. The supreme court in *Soja v. Pennsylvania State Police*, 455 A.2d 613, 615, 500 Pa.188, 194 (1982) noted that the prerequisites of due process are articulated as follows:

“[The] essential elements [of due process] are ‘notice and opportunity to be heard and to defend in an orderly proceeding adapted to the nature of the case before a tribunal having jurisdiction of the cause’: 12 Am.Jur. § 573, pp. 267, 268; *Com. ex rel. Chidsey v. Keystone Mut. Cas. Co.*, 373 Pa. 105, 109, 95 A.2d 664; *Carter v. Kubler*, 320 U.S. 243, 88 L.Ed. 26, 64 S.Ct. 1; *Ohio Bell Telephone v. Public Utilities Commission of Ohio*, 301 U.S. 292, 81 L.Ed. 1093, 57 S.Ct. 724....Moreover, “[i]n almost every setting where important decisions turn on questions of fact, due process requires **an opportunity to confront and cross-examine adverse witnesses.**” *Goldberg v. Kelly*, 397 U.S. 254, 269. 90 S.Ct. 1011, 1021, 25 L.Ed.2d 287 (1970). (*Emphasis added*).

23. While the Commission as an administrative agency having quasi-judicial functions is not limited by the strict rules relating to the admissibility of evidence, essential principles must be observed. *Pittsburgh and Lake Erie Railroad Company v. Pennsylvania Public Utility Commission*, 85 A.2d 646, 653 (Pa. Super. Ct. 1952); *Bleilevens v. State Civil Service Commission*, 312 A.2d 109, 111 (Pa. Commw. 1973).

24. Section 5.403(a)(1) of the Commission’s regulations authorizes the presiding officer to control the receipt of evidence, including ruling on the admissibility of evidence. 52 Pa. Code § 5.403(a)(1).

25. Section 5.403(b) of the Commission’s regulations requires the presiding officers to “actively employ these powers to direct and focus the proceedings consistent with due process” 52 Pa. Code § 5.403(b).

26. Under Section 5.401(a) of the Commission’s regulations, relevant and material evidence is admissible in Commission proceedings subject to objections on other grounds. 52 Pa. Code § 5.401(a). 52 Pa. Code § 5.401. *See also* Pa.R.E. 402; *See also American Future Systems, Inc. v. Better Business Bureau of Eastern Pennsylvania*, 872 A.2d 1202 (Pa. Super. 2005).

27. Under Section 5.401(b) of the Commission's regulations, evidence will be excluded if it is repetitious or cumulative, or if its probative value is outweighed by danger of unfair prejudice, confusion of the issues, or considerations of undue delay or waste of time. 52 Pa. Code § 5.401(b).

28. Under Section 5.407. Records of other proceedings.

(a) When a portion of the record in another proceeding before the Commission is offered in evidence and shown to be relevant and material to the instant proceeding, a true copy of the record shall be presented in the form of an exhibit, together with additional copies as provided in § 5.409 (relating to copies and form of documentary evidence), unless both of the following occur:

(1) The party offering the record agrees to supply, within a period of time specified by the Commission or the presiding officer, the copies at his own expense, if any, when so required.

(2) The portion is specified with particularity so as to be readily identified, and upon motion is admitted into evidence by reference to the records of the other proceedings.

PGW has not offered the full record of the Base Rate proceeding (R-2017-2586783) to SBG or the Commission as part of its Petition. Nor should they in this instance because it is not germane to the SBG consolidated matters before the Commission. Nor is the SBG record germane to Rate Proceeding. PGW is "gas lighting" the Commission to distract from the real issue, which is its illegal accounting, billing and collections practices which pertain to all customers. The Commission does not need to confuse the records of the proceedings by introducing untested, unrelated, unnecessary evidence into SBG's already voluminous record.

29. Pennsylvania Rule of Evidence 801 defines "hearsay" as an out of court statement offered to prove the truth of the matter asserted. Pa.R.E. 801. It has long been recognized in Pennsylvania that hearsay rules are not mere "technical rules of evidence" but are fundamental rules of law that should

be followed by agencies when facts crucial to the issue are sought to be placed on the record. *See, e.g. Loudon v. Viridian Energy*, Pa PUC Docket No. C-2011-2244309 (Initial Decision dated February 2, 2012, Final Order entered March 29, 2012; *Gibson v. W.C.A.B.*, 861 A.2d 938 (Pa. 2004); and *Anthony v. PECO Energy Co.*, PA PUC No. C-2014-2408057 (Order entered July 30, 2014).

30. Even when hearsay is admissible pursuant to an exception, it is well-settled that a finding based wholly on hearsay cannot support a legal conclusion by an administrative agency. *Walker v. Unemployment Compensation Board of Review*, 367 A.2d 366 (Pa. Cmwlth. 1976). The Commission has held that “[a]lthough the Pennsylvania Rules of Evidence are relaxed in an administrative proceeding crucial findings of fact may not be established solely by hearsay evidence.” *Pa. PUC, Bureau of Investigation & Enforcement v. Yellow Cab Co. of Pittsburgh*, Docket No. C-2012-2249031, 2013 WL 5912555 (Pa. PUC Oct. 8, 2013). The Commission has expressly refused to make findings of fact on the basis of hearsay without separate evidence corroborating it. *See, e.g., Jackson v. PECO Energy Co.*, Docket No. F-2013-2351046 (July 5, 2013); *Davis v. Equitable Gas, LLC*, Docket No. C-2011-2252493, 2012 WL 3838095 (April 27, 2012).

31. The Cummings’ Rebuttal and Rejoinder testimony and the attached Exhibits BLC 1 – 4 are highly prejudicial to SBG’s position. They are all hearsay; the documents are not authenticated, partially developed and are incomplete. The documents and testimony have not been subject to a proceeding whereby SBG is a participating party, nor has SBG had an opportunity to test the validity of the newly attached information presented in the Petition by way of having a full and fair hearing subject to cross examination. However, the Base Rate (R-2017-2586783) record is likely far more developed, complete and relevant, therefore the information PGW is trying to attach to the SBG matters should remain in those Base Rate proceedings, and those proceedings alone.

32. For example, Exhibit BLC-4 contains loose pages from discovery interrogatories purportedly answered by OCA's witness, Roger C. Colton, however, the context of the questions asked and answered are incomplete and unverified. SBG was not a party to the Base Rate proceeding or any of its pre-hearing discovery process. The Supplemental Petition is woefully deficient in meeting even minimal due process requirements. And while it is in the Commission's purview to order a rehearing on the matter, it is fundamentally unfair, highly prejudicial to SBG who has presented substantial evidence on the matter, exposed PGW's illegal practices and demonstrated to the tribunal the adverse impact PGW's accounting practices has had on its customer accounts.

The court in *Armstrong Telecommunications, Inc. v. Pennsylvania PUC*, 835 A.2d 409 (Pa. Cmwlth. Ct. 2003) found a violation of equal protection and due process rights where the Commission order reinstated an exemption previously expired from a separate proceeding, commenting, "[w]hile, where appropriate, the Commission can amend a prior order, it must do so in a proceeding that relates back to the proceeding in which the original order was issued....Ignoring whether due process requires that a party receive notice that an order is going to be amended and that party has a right to the same type of hearing from which the order emanated, Section 703(g) of the Public Utility Code requires that notice be provided and an opportunity to be heard to those parties who may be affected by a change in its order". In PGW's Supplemental Petition before the Commission, it would be a violation of SBG's equal protection and due process rights to grant PGW's requests herein. The Commission should disallow PGW's attempts to dovetail its issues raised in the Base Rate proceeding into SBG's complaints because SBG has not participated in or been a party to that unrelated Base Rate proceeding. The issues in each should remain separate and distinct addressed by the Commission based on the records developed below.

33. To the extent that PGW has admitted that it does in fact post partial payments first to service agreements and late fees before prior balances due, it is axiomatic that the practice should be applied to all PGW's customers since PGW has long concealed its practices from the Commission and ratepayers. Moreover, the fact that PGW is now at the 11th hour throwing a hail Mary pass to the Commission to attach its Base Rate proceeding to the SBG complaints is indicative of PGW's motives to either further delay having to implement a correction to its financial accounting system or to side-step the Commission's Final Order based on the current record and launch a feeble attempt to rehabilitate Cummings' unconvincing testimony. Either way, PGW should not be given another bite of the apple.

34. The authority cited regarding reconsideration under Sections 703 of the Code and 5.572 of the regulations are clear and not meant to afford parties an opportunity to re-litigate issues that were wholly developed at the trial stage before the Commission. Section 703(b) of the Code states in relevant part, that "[t]he Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest." 66 Pa.C.S. §703(b). It is a fundamental proposition of law that a hearing or trial procedure is necessary only to resolve disputed questions of fact and is not required to decide questions of law, policy or discretion." *Painter v. Pennsylvania PUC*, No. 1010 C.D. 2014 (Filed May 8, 2015), 116 A.3d 749 (Pa. Cmwlth. 2015), quoting, *Lehigh Valley Power Committee v. Pennsylvania Public Utility Commission*, 563 A.2d 548, 556 (Pa. Cmwlth. 1989). See also *Chester Water Authority v. Pennsylvania Public Utility Commission*, 868 A.2d 384, 392 (Pa. 2005) ("[A]s a matter of constitutional due process, an evidentiary hearing is most often implicated where there are material facts in dispute. Here, since the Commission was able to accept the material factual allegations of the authority's protest as true, a due process hearing was not essential, ..."). *Painter* at 12.

35. It's been over five (5) years since SBG's complaints were filed with the Commission. PGW has been on notice for more than a decade that these Complainants were seeking disclosure of PGW's manner, methodology and practices on how it applied/posted payments, late payment charges to its accounts for accumulated debt, and debt that was docketed as lien judgments with the Court of Common Pleas of Philadelphia.

36. Furthermore, PGW had a full and fair opportunity to respond to SBG's allegations prior to initiating litigation. PGW refused to acknowledge SBG's complaints, delayed and deferred resolution of the matter because it was to the Company's benefit to ignore, deflect and deny their illegal practices.

37. There are no material issues of fact in dispute. PGW readily agrees they maintain these practices which violate the Public Utility Code and they do not see anything wrong with their actions.

38. Judge Vero's decision finds that "[i]t is an undisputed fact in these consolidated matters that, as part of its regular practice, PGW does not distinguish in its application of the late payment charges between an outstanding balance that is the subject of a municipal lien and one that is not. As stated *supra*, according to PGW "[t]he fact that the amount was lien for non-payment should have no effect on the assessment of LPCs." PGW's Main Brief, PGW Reply Brief, at 16. Through this practice PGW is maintaining two separate claims on the same amount of outstanding debt: one claim under the PGW's Tariff and Commission regulation at 52 Pa.Code § 56.22 (reflected in its imposition of 18% interests rate of late payment charges on the outstanding balance or debt), and a second claim under the Municipal Lien Act in the form of a lien, an *in rem* judgment [sic] against the Complainants' property." I.D. at page 62.

ALJ Vero also credited Complainants' expert witness, Roger Colton's, testimony regarding PGW's thirty (30) year practice of re-ordering payments posted to the account to

extinguish service agreements and late fees first before applying partial payments to prior balances in accordance with §56.24. I.D. at page 40. The Initial Decision finds “the re-ordering of payments is a practice that affects compensation paid to PGW so it is a rate, and as a rate, it needs to be just and reasonable in accordance with 66 Pa.C.S. §1301.⁵ Tr. 616. Mr. Colton continued his testimony explaining that the primary issue of just and reasonableness is whether a practice is dictated by costs or reflects costs. According to Mr. Colton, PGW’s practice of reordering payments is not cost-based. “There is no difference in the staff people that [PGW uses] for collection processes based upon the composition of an unpaid bill. There’s no difference in the cost of money. There is no difference in the time that’s expended.” Tr. 617. Mr. Colton testified that PGW’s posting process is also in violation of 66 Pa.C.S. §1303, which prohibits a utility from directly or indirectly by any means or device whatsoever charge a customer more than what their tariff provides. Tr. 618. PGW’s tariff provides that the Company will charge a late payment charge of 1.5 percent, not to exceed 18 percent simple interest annually; however, Mr. Colton’s expert opinion is that through the reordering of payments practice, PGW is in effect, or indirectly, charging and collecting more than 18% simple interest on outstanding service charges. Tr. 618-19, see also 620-22, 626, 632-633.

Mr. Colton summarized the conclusion he reached upon reviewing the Complainants’ account statements and bills from PGW as follows: 1) PGW reorders customer payments in order to reduce more recent noninterest bearing balances while leaving older interest bearing balances; 2) PGW does not manage bills so as to minimize customers’ arrears; 3) payment reordering constitutes a rate because it is a practice which affects the compensation to be paid to PGW; 4) as

⁵ § 1301. Rates to be just and reasonable.

Every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable...

a rate payment reordering has not been presented to the Commission for review and approval; 5) as a rate payment reordering is not cost based or mandated by any costs incurred by PGW; and 6) the reordering of payments has been found to be an unreasonable commercial practice in analogous circumstances (referring to the banking and credit card industry). Tr. 620, 660. *See I.D. at page 40.*

Ultimately, the ALJ sustained in part Complainants' complaint, found PGW violated several sections of the Public Utility Code ordered PGW to credit Complainants' accounts with sums certain as follows: 1) Philadelphia Gas Works shall credit the Colonial Garden Realty Co., L.P.'s Account # 6128000245, SA # 1375369694, in the amount of \$281.36; 2) Philadelphia Gas Works shall credit the Colonial Garden Realty Co., L.P.'s Account # 6128000245, SA#4018739567, in the amount of \$218.96; 3) Philadelphia Gas Works shall refund \$94,626.23 to Colonial Garden Realty Co., L.P., Account # 6128000245, plus interest at the legal rate from the date of each excessive payment; and 4) Philadelphia Gas Works shall refund \$471,351.38 to Simon Garden Realty Co., L.P., Account # 539547187, plus interest at the legal rate from the date of each excessive payment. She also ordered civil penalties against PGW in the amount of \$27,000 for violating the Public Utility Code. PGW filed Exceptions to the ALJ's initial decision.

The Commission's Final Order and Opinion dated December 8, 2016 noted that ALJ Vero reached sixty-eight (68) Findings of Fact and drew twenty-six (26) Conclusions of Law. The Commission adopted the Findings of Fact of presiding ALJ Vero. After a painstaking one hundred and twelve (112) page opinion, the Commission adopted the Conclusions of Law of ALJ Vero to the extent the said conclusions were not expressly rejected or modified, or rejected or modified by

necessary implication from their discussion and disposition of the Exceptions of PGW. *See Commission Opinion and Order Dated December 8, 2016.*

39. Now that PGW's financial schemes have been uncovered and disclosed to the Commission and PGW customers as a direct result of this litigation, PGW now asks for reconsideration of the Commission's final order. It's as if the curtain has been pulled back and the wizard is exposed for the fraud that he is. And now, PGW wants a 'do over'! They have not presented any new legal theory or any novel argument as to why the Commission's order should be reviewed, Cummings' Rebuttal and Rejoinder testimony and Exhibits BLC 1 – 4 should be admitted into the record. Moreover, they offer no explanation as to why Cummings did not refute or explain how PGW's practice was lawful when he testified over several days in the SBG matters in 2013 and 2015; and, apparently Cummings only presented the semblance of a specious argument as to why PGW's needs to maintain the partial practice and that rationale is not to the benefit of ratepayers, but to the benefit of the company's ability to generate profits, which he stated in the 2017 Base Rate proceeding. It took Cummings four (4) years to come up with a rationale for the illegal practice. And that rationale **is not** advantageous to PGW's patrons.

40. The SBG complaint proceeding is not the appropriate forum to debate the intricacies of establishing a tariff rate. The better forum to consider PGW's tariff is in the General Base Rate Increase proceeding docketed at R-2017-2586783 which is currently pending review with the Commission. However, the complaint proceeding is the appropriate forum for the Commission to enforce the rule of law that is already established under 52 Pa. Code § 56.22 and §56.24. For many years, PGW has been illegally manipulating interest bearing charges on customer's bills by paying down non-interest bearing debt before applying payments to prior, interest bearing debt, especially in the case of partial payment application.

41. PGW has confirmed its practice of reordering partial payments on past due accounts consistent with the manner observed by SBG's witnesses on the subject. PGW witness, Bernard Cummings, admitted that PGW applied partial payments to late payment charges first. I.D. at 41; Fact # 48, 49; Tr. 753-54. PGW took the position that, according to Commission Regulations, absent written instructions by the customer, all partial payments should be applied to "basic" charges first, and, he explained, late payment charges are "basic" charges. *Id.* Thus, PGW responds that it does not violate any Commission Regulation with its application of partial payments and that the Commission Regulations do not specify a "hierarchy" in the order of payments within the basic charges themselves. *Id.*; Tr. 753.

42. The Commission summarized PGW's arguments raised in its Exceptions listing its core objections to the Initial Decision. PGW objects to the ALJ's conclusion that the charging of late payment fees on Complainants' arrearages is, essentially, barred, once PGW files a lien on Complainants' property. Exc. at 2. "PGW also argues that such claims are not within the jurisdiction of the Commission to adjudicate in these proceedings. *Id.*

43. The Commission's order also concludes "PGW also opposes the Initial Decision's findings that its allocation methodology concerning the order of payments for partial payments on past due balances was improper. PGW takes the position that the allocations mandated by the Initial Decision are not supported by the plain language of the Commission's existing regulation, would permit delinquent account customers to systematically avoid paying late payment charges, and are not consistent with the policy objectives of Chapter 14 of the Code, 66 Pa. C.S. § 1402(1), which expresses an intent to provide city natural gas distribution operations additional collection tools. Exc. at 4."

44. PGW repeatedly failed to rebut SBG's arguments and evidence. They did not rebut any of SBG's legal theories raised at any of the hearings spanning over two years from August 2013 through March 2015. PGW has not argued its contrary position until it submitted its misleading and misguided Exhibit BLC – 3 in this Petition. PGW had an opportunity to refute SBG's arguments regarding late payment charges when it filed its Main briefs and Reply briefs and Exception, but PGW confident in its position that the Commission would not assert jurisdiction over late fees pertaining to liens rested on its position that the MTCLL provided safe harbor and refuge from the PUC's purview and jurisdiction on all issues.

45. Even in this Supplemental Petition, PGW does not offer any new information or alternate theory of the case to warrant the Commission granting relief. However, PGW must follow the plain, unambiguous language of the Public Utility Code when calculating bills and applying late fees. (52 Pa. Code §§ 56.22 and 56.24). The fact that PGW is held to its tariff and the promulgated rules and regulations under the Public Utility Code is not a new or novel concept that warrants the Commission's review.

46. PGW's own evidence (PGW Exhibit 1B) submitted at the hearing before ALJ Vero belies the methodology that it seeks to correct in its submission of Exhibit BLC – 3 in this Supplemental Petition. To illustrate their misguided, misrepresentation of the payment posting scheme I call your attention to PGW's Exhibit 1B, an analysis that was only obtained by SBG through the filing of multiple Motions to Compel. The information presented is deeply embedded in its financial systems and is not available to any other customer. The necessary analysis cannot be deciphered from its billing statements, tariff or a customer's statement of accounts, which are only available upon request, absent an extended analysis.

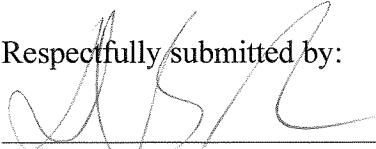
Let's examine a snapshot of PGW Exhibit 1B - SBG's Simon Garden account #539547187, SA# 1162325601 from bill date 02/07/2005 with a due date of 03/03/2005 – 09/01/2005. (See PGW Exhibit 1 B attached hereto as Attachment 1).

Bill Date Bill \$\$	PGW Prior Balance	PGW late fees	SBG Payments	SBG Calculations & Late Fees & Balance
02/07/05 \$2823.30	Due date 03/03/05 \$43,004.67	\$0.00		Assumptions: Starting with \$43,004.67 balance, inclusive of Feb. bill \$2,823.30 and \$593.81 LPC assessed on 02/01/05, but not due until 02/02/05, PGW. \$593.81 LPC shouldn't be assessed on that date.
03/01/05	\$43,640.83	\$636.16		PGW assesses LPC \$636.16 prior to due date which SBG analysis does not count b/c the \$593.81 is carried forward into both Feb & Mar balances.
03/03/05			(\$1,779.34) (\$2,367.68)	Assumes Prior Bal. with \$0 LPC per PGW Exhibit 1B, LPC's assessed before due date Prior Bal – payments = new balance + new bill x .015 (LPC) = New Balance \$43,004.67 - \$1779.34 - \$2,367.68 = \$38,857.65 x .015 = \$582.87 + \$38857.65 = 39,440.52
03/07/05 \$2,852.94	Due Date 03/31/05 \$42,346.75	04/01/05 \$483.12	03/09/05 (\$7,577.23) 03/24/05 (2,581.39)	Prior Bal – payments = new bal. + bill due = total bal x .015 = LPC \$39,440.52 - \$7,577.23 - \$2,581.39 = \$29,281.90 + \$2,852.94 = \$32,134.84 \$32,134.84 x .015 = \$482.03 (new LPC), \$32,134.84 + \$482.03 = \$32,616.87 or new prior balance
04/07/05 \$2,709.52	Due date 05/02/05 \$35,400.77	05/02/05 \$523.76 PGW Balance \$35,924.53	\$0	\$32,616.87 + \$2,709.52 = \$35,326.39 x .015 = \$529.90 + \$35,326.39 = \$35,856.29
05/06/05 \$872.76	Due date 06/01/05 \$36,797.29	06/01/05 \$486.51	05/12/05 Ipcwve (\$1,643.04) 05/23/05 (\$2,720.21)	\$35,856.29 - \$1,643.04 - \$2,720.21 = \$31,493.04 + \$872.76 = \$35,317.97 \$35,317.97 x .015 = \$529.77 (new LPC), \$35,317.97 + \$529.77 = New prior balance: \$32,365.80
06/07/05 \$689.83	Due date 06/30/05 \$33,590.38	07/01/05 \$496.55	\$0	\$32,365.80 + \$689.83 = \$33,055.63 x .015 = \$495.84 + \$33,055.63 = \$33,551.47
07/08/05 \$418.39	Due date 08/02/05 \$34,505.32	08/01/05 \$486.48	07/21/05 (\$2,073.20)	\$33,551.47 - \$2,073.20 = \$31,478.27 + \$418.39 = 31,896.66 x .015 = \$478.45 + \$31,896.66 = \$32,348.11

08/05/05	08/30/05	09/01/05	08/12/05	$\$32,348.11 - \$1,269.05 = \$31,079.06 + \$296.68 = \$31,375.74 \times .015 =$
\$296.68	PGW's Prior Balance \$33,215.28	\$479.19	(\$1,269.05)	$\$470.64 + \$31,375.74 = \$31,846.38$ SBG's calculation \$31,846.38 New Prior Balance

The above table illustrates the impact that PGW's payment posting practices has on a customer account, an exercise that has been calculated by the Commission, Judge Vero and testified to in both proceedings by expert, public utility economist, Roger C. Colton. These practices are very subtle and nuanced. There are uniquely embedded into PGW's internal accounting systems. Over the course of many years, the remaining balances subject to late fees do add up and provide for additional revenues for PGW, which are reflected in their annual report. (See SBG Main Brief – Appendix). PGW puts forth a very disingenuous argument about their methodology that late fees remain unpaid. Their illustration at BLC-3 fails to account for the accumulated late fees that are included in prior balances that remain unpaid.

Wherefore, for the reasons set forth above, SBG respectfully requests that the Commission grant SBG's Motion to Deny/Strike, deny PGW's petition in its entirety, strike the rebuttal and rejoinder testimony of Bernard Cummings and the attached Exhibits BLC -1 through 4.

Respectfully submitted by:


 Donna S. Ross, Esquire for SBG

Date: 10/18/2017

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

In the Matter of:

SBG's Answer to PGW's Supplemental Petition for Reconsideration/Rehearing

In the Matters of: SBG Management Services, Inc./Colonial Garden Realty, LP v. Philadelphia Gas Works, Docket No. C-2012-2304183 and SBG Management Services, Inc./Simon Gardens Realty, LP v. Philadelphia Gas Works, Docket No. C-2012-2304324

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 Email/First Class, U.S. mail 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.

Honorable ALJ Eranda Vero
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For Pa PUC

Mr. Daniel Clearfield, Esquire
Ms. Karen Moury, Esquire
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Mr. Phil Pulley and Ms. Kathy Treadwell
For SBG

Hon. Rosemary Chiavetta, Secretary
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Date: 10/18/2019

By: 

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02/01/2004	LPC			0.00								\$479.91	\$32,486.47	\$32,486.47	\$32,006.55	12.56	31,994.00	0.015	479,910.00
02/09/2004	BILL		R	31	1880	60.85	1108					\$2,585.11	\$35,071.58	\$35,071.58					

Transaction Date	Type	Reading	Ing Code	# of Days	CCF Usage	CCF/Da	Heating DDD's	Payme nt Type	Due Date	Transaction Amount	Current Balance	Actual Balance	Unpaid Bal	Unpaid LPC	Calculated Unpaid Bal	Mont Hly %	Calculated LPC
03/01/2004	LPC	71770	R	29	1806	55.38	932		03/29/20	\$518.86	\$35,590.26	\$35,590.26	\$35,071.58	482.47	34,579.11	0.015	518,686.65
03/04/2004	BILL					55.38				\$2,248.67	\$37,838.93	\$37,838.93	\$37,838.93				
04/02/2004	LPC	73081	R	31	1311	42.29	653		05/03/20	\$552.41	\$38,391.34	\$38,391.34	\$37,838.93	1,011.15	36,827.78	0.015	552,418.70
05/01/2004	LPC	73929	R	32	848	28.50	384		06/01/20	\$981.53	\$40,372.87	\$40,372.87	\$40,372.87				
08/02/2004	LPC	74206	R	27	277	10.26	61	Check	06/30/20	\$1,264.07	\$42,186.19	\$42,186.19	\$40,372.87	1,563.56	38,769.03	0.015	581,535.45
08/14/2004	LPC					0.00				\$600.34	\$43,212.21	\$43,212.21	\$42,186.19	2,145.09	40,023.10	0.015	600,346.50
08/14/2004	PAY					0.00		Check		\$443.68	\$43,212.21	\$43,212.21	\$43,212.21				
07/02/2004	LPC					0.00				(\$1,434.79)	\$41,777.42	\$41,777.42	\$41,777.42				
07/09/2004	BILL		R	32	190	5.94	15		08/02/20	\$607.00	\$42,384.42	\$42,384.42	\$41,777.42	1,310.64	40,466.78	0.015	607,001.70
08/01/2004	LPC	74398	R	32	192	6.00	0			\$302.15	\$42,686.57	\$42,686.57	\$42,686.57				
08/06/2004	BILL		R	32	192	6.00	0		08/31/20	\$611.53	\$43,298.10	\$43,298.10	\$43,298.10	1,917.64	40,768.93	0.015	611,533.95
09/01/2004	LPC	74766	R	30	178	5.93	0			\$308.02	\$44,606.12	\$44,606.12	\$43,606.12	2,529.17	41,076.95	0.015	616,154.25
09/02/2004	BILL		R	32	208	6.50	9		10/01/20	\$616.15	\$45,222.27	\$45,222.27	\$44,222.27	2,529.17	41,076.95	0.015	616,154.25
10/08/2004	LPC	74974	R	32	208	6.50	9			\$286.98	\$45,509.23	\$45,509.23	\$45,509.23	3,145.32	41,363.91	0.015	620,458.65
11/02/2004	LPC	75379	R	29	405	13.97	230		11/02/20	\$825.47	\$46,089.79	\$46,089.79	\$45,464.32	3,765.77	41,698.55	0.015	625,478.25
11/05/2004	BILL		R	29	405	13.97	230			\$825.47	\$46,089.79	\$46,089.79	\$46,089.79				
12/03/2004	LPC	76449	R	29	1070	36.90	428		01/03/20	\$634.83	\$47,348.09	\$47,348.09	\$46,713.26	4,391.24	42,322.02	0.015	634,830.30
12/07/2004	BILL		R	29	1070	36.90	428			\$1,890.17	\$49,028.26	\$49,028.26	\$49,028.26	5,026.07	44,002.19	0.015	660,032.85
01/07/2005	BILL	77958	R	34	1509	44.38	894		02/02/20	\$2,522.41	\$52,210.70	\$52,210.70	\$49,028.26	5,026.07	44,002.19	0.015	660,032.85
02/01/2005	PAY					0.00		Check		(\$12,623.14)	\$39,587.56	\$39,587.56	\$39,587.56				
02/07/2005	LPC	79592	R	29	1634	56.34	872		03/03/20	\$2,823.30	\$40,181.37	\$40,181.37	\$39,587.56	0.00	39,587.56	0.015	593,813.40
03/01/2005	LPC					0.00				\$636.16	\$43,004.67	\$43,004.67	\$43,004.67				
03/03/2005	PAY					0.00		Check		(\$1,779.34)	\$41,861.49	\$41,861.49	\$41,861.49				
03/03/2005	PAY					0.00		Check		(\$2,367.68)	\$39,483.81	\$39,483.81	\$39,483.81				
03/03/2005	BILL		R	28	1667	59.54	839		03/31/20	\$2,852.94	\$42,346.75	\$42,346.75	\$42,346.75				
03/09/2005	PAY					0.00		Check		(\$7,577.23)	\$34,769.52	\$34,769.52	\$34,769.52				
03/24/2005	PAY					0.00		Check		(\$2,581.39)	\$32,208.13	\$32,208.13	\$32,208.13				

Transaction Date	Type	Reading	Ing Code	# of Days	CCF Usage	CCF/Da	Heating DDD's	Payme nt Type	Due Date	Transaction Amount	Current Balance	Actual Balance	Unpaid Bal	Unpaid LPC	Calculated Unpaid Bal	Mont Hly %	Calculated LPC
04/01/2005	LPC	83098	R	33	1840	55.76	909		05/02/20	\$483.12	\$32,691.25	\$32,691.25	\$32,208.13	0.00	32,208.13	0.015	483,121.95
04/07/2005	BILL		R	33	1840	55.76	909			\$2,709.52	\$35,400.77	\$35,400.77	\$35,400.77				
05/02/2005	LPC	83650	R	29	551	19.00	315		06/01/20	\$523.76	\$36,924.53	\$36,924.53	\$35,924.53	483.12	34,917.65	0.015	523,764.75
05/08/2005	BILL		R	29	551	19.00	315			\$872.76	\$37,797.29	\$37,797.29	\$37,797.29				
05/12/2005	LPC					0.00				(\$1,843.04)	\$35,954.25	\$35,954.25	\$35,954.25				
05/23/2005	PAY					0.00		Check		(\$2,720.21)	\$33,234.04	\$33,234.04	\$33,234.04				
06/01/2005	LPC					0.00				\$486.51	\$33,920.55	\$33,920.55	\$33,920.55				
06/07/2005	BILL		R	29	465	16.03	193		06/30/20	\$689.83	\$33,580.38	\$33,580.38	\$33,580.38	0.00	32,434.04	0.015	485,510.60
07/01/2005	LPC	84115	R	29	465	16.03	193			\$498.55	\$34,086.93	\$34,086.93	\$34,086.93	486.51	33,103.87	0.015	496,559.05
07/08/2005	BILL		R	33	250	7.58	11			\$418.39	\$34,505.32	\$34,505.32	\$34,505.32				
07/21/2005	PAY					0.00		Check	08/02/20	(\$2,073.20)	\$32,432.12	\$32,432.12	\$32,432.12				
08/10/2005	LPC					0.00				\$486.48	\$32,918.60	\$32,918.60	\$32,918.60	0.00	32,432.12	0.015	486,481.80

PGW Exhibit 1B

Transaction	Date	Type	Reading	ing	# of	CGF	CGF/Da	Heating	Payma	Due	Transaction	Current	Actual	Unpaid Bal	Unpaid	Calculated	Mont	Calculated
				Code	Days	Usage	ys	DD's	nt Type	Date	Amount	Balance	Balance	LPC	LPC	Unpaid Bal	hy %	LPC
08/05/2005	08/12/2005	BILL	84536	R	29	171	5.90	0		08/30/20	\$296.68	\$33,215.28	\$33,215.28					
		PAY					0.00		Check		(\$1,269.05)	\$31,946.23	\$31,946.23	\$31,946.23	0.00	31,946.23	0.015	479.19345
09/01/2005	09/07/2005	BILL	84720	R	31	184	5.94	0		09/30/20	\$317.76	\$32,743.18	\$32,743.18					
		LPC					0.00				\$483.95	\$33,227.13	\$33,227.13	\$32,743.18	479.19	32,283.99	0.015	483.95985
10/08/2005	11/07/2005	BILL	84927	R	32	207	6.47	0		10/31/20	\$370.13	\$33,597.26	\$33,597.26					
		LPC					0.00				\$489.51	\$34,086.77	\$34,086.77	\$33,597.26	963.14	32,634.12	0.015	489.51180
11/07/2005	12/01/2005	BILL	85324	R	29	397	13.69	149		12/02/20	\$827.54	\$34,914.31	\$34,914.31					
		PAY					0.00		Check		(\$1,772.54)	\$33,141.77	\$33,141.77	\$33,141.77	0.00	33,141.77	0.015	497.12655
12/01/2005	01/03/2006	BILL	86446	R	30	1122	37.40	465		01/03/20	\$497.12	\$33,638.89	\$33,638.89					
		LPC					0.00				\$2,359.15	\$36,530.55	\$36,530.55	\$33,638.89	497.12	35,500.92	0.015	532.51380
01/03/2006	01/09/2006	BILL	86252	R	32	1806	58.44	923		02/01/20	\$532.51	\$36,998.04	\$36,998.04					
		LPC					0.00				\$587.98	\$40,228.41	\$40,228.41	\$36,998.04	1,029.63	39,198.78	0.015	587.98170
02/01/2006	02/07/2006	BILL	89799	R	30	1547	51.57	730		03/03/20	\$639.19	\$44,868.89	\$44,868.89					
		LPC					0.00				\$3,414.31	\$48,283.70	\$48,283.70	\$44,868.89	1,617.61	42,613.09	0.015	639.19635
03/01/2006	03/07/2006	BILL	91366	R	28	1567	55.96	758		03/30/20	\$3,346.31	\$48,218.20	\$48,218.20					
		PAY					0.00		Check		(\$1,738.98)	\$46,477.22	\$46,477.22	\$46,477.22	517.82	45,959.40	0.015	689.39100
03/15/2006	04/04/2006	BILL	93085	R	33	1719	52.09	763		05/03/20	\$689.39	\$47,166.61	\$47,166.61					
		LPC					0.00				\$3,572.52	\$50,739.13	\$50,739.13	\$46,477.22	517.82	45,959.40	0.015	689.39100
05/01/2008	05/05/2008	BILL	93843	R	28	758	27.07	231		05/31/20	\$742.97	\$51,482.10	\$51,482.10					
		LPC					0.00				\$1,735.36	\$53,217.46	\$53,217.46	\$50,739.13	1,207.21	49,531.92	0.015	742.97880
08/01/2008	08/07/2008	BILL	94394	R	30	551	18.37	133		08/30/20	\$769.00	\$53,986.46	\$53,986.46					
		LPC					0.00				\$1,159.05	\$55,145.51	\$55,145.51	\$53,217.46	1,950.18	51,267.28	0.015	769.00920
07/05/2008	07/07/2008	BILL	94782	R	33	388	11.76	2		08/01/20	\$788.39	\$55,931.90	\$55,931.90					
		LPC					0.00				\$845.47	\$56,777.37	\$56,777.37	\$55,145.51	2,719.18	52,426.33	0.015	788.39465
08/02/2008	08/07/2008	BILL	95088	R	29	308	10.55	0		08/30/20	\$799.07	\$57,576.44	\$57,576.44					
		LPC					0.00				\$821.37	\$58,197.81	\$58,197.81	\$56,777.37	3,505.57	53,271.80	0.015	799.07700
08/01/2008	08/09/2008	BILL	95417	R	33	329	9.97	0		10/03/20	\$808.39	\$59,006.20	\$59,006.20					
		LPC					0.00				\$666.82	\$59,672.82	\$59,672.82	\$58,197.81	4,304.64	53,893.17	0.015	808.39755
10/08/2008	10/02/2008	BILL	95693	R	29	276	9.52	20		10/31/20	\$818.39	\$60,491.21	\$60,491.21					
		LPC					0.00				\$562.05	\$61,053.26	\$61,053.26	\$59,672.82	5,113.03	54,559.79	0.015	818.39895
11/02/2008	11/07/2008	BILL	96314	R	30	621	20.70	419		11/30/20	\$826.82	\$63,880.08	\$63,880.08					
		LPC					0.00				\$1,215.34	\$65,095.42	\$65,095.42	\$61,053.26	5,931.42	55,121.84	0.015	826.82760
12/07/2008	01/02/2009	BILL	97217	R	32	903	28.22	446		01/04/20	\$845.05	\$63,940.47	\$63,940.47					
		LPC					0.00				\$1,870.25	\$65,810.72	\$65,810.72	\$63,940.47	6,758.24	56,337.18	0.015	845.05770
01/08/2009	01/13/2009	BILL	98384	R	29	1167	40.24	592		02/01/20	\$873.11	\$66,683.83	\$66,683.83					
		LPC					0.00				\$2,395.01	\$69,078.84	\$69,078.84	\$66,683.83	7,603.29	58,207.43	0.015	873.11145
02/05/2009	02/23/2009	BILL	99958	R	31	1574	50.77	771		03/02/20	\$909.03	\$69,987.87	\$69,987.87					
		PAY					0.00		Check		\$3,202.70	\$73,190.57	\$73,190.57	\$69,987.87	8,476.40	60,802.44	0.015	909.03660
02/28/2009	03/05/2009	BILL	1884	R	28	1906	68.07	1049		03/28/20	\$957.07	\$72,021.47	\$72,021.47					
		LPC					0.00				\$3,482.23	\$76,460.77	\$76,460.77	\$72,021.47	8,216.33	63,805.14	0.015	957.07710
03/30/2009	04/04/2009	BILL	3295	R	32	1431	44.72	752		04/30/20	\$2,089.88	\$80,168.96	\$80,168.96					
		LPC					0.00				\$1,049.79	\$81,218.75	\$81,218.75	\$80,168.96	9,173.40	67,287.37	0.015	1009.31055
04/30/2009	05/01/2009	BILL	4230	R	29	935	32.24	447		05/29/20	\$1,705.89	\$82,924.44	\$82,924.44					
		LPC					0.00				\$1,075.37	\$83,999.81	\$83,999.81	\$82,924.44	10,182.71	69,986.25	0.015	1049.79375
05/08/2009	06/08/2009	BILL	4864	R	30	434	14.47	106		06/29/20	\$883.38	\$84,883.19	\$84,883.19					
		LPC					0.00				\$883.38	\$84,883.19	\$84,883.19	\$83,999.81	11,232.50	71,691.94	0.015	1075.37910