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November 3, 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 Management Services, Inc./Colonial Garden Realty Co., L.P.; Docket No. C-2012-2304183 and SBG Management Services, Inc./Simon Garden Realty Co., L.P.; Docket No. C-2012-2304324

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Philadelphia Gas Works' Answer to Motion to Strike or Dismiss of SBG Management Services, Inc. with regard to the above-referenced matter. Copies are being served in accordance with the attached Certificate of Service.

Sincerely,



Daniel Clearfield

DC/lww
Enclosure

cc: Certificate of Service (w/enc)
Hon. Eranda Vero, ALJ (w/enc)
Cheryl Walker Davis (w/enc via email only)
Tanya McCloskey (w/enc via email only)

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of PGW's Answer To Motion To Strike Or Dismiss of SBG Management Services, Inc., upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email and/or First Class Mail

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Date: November 3, 2017



Daniel Clearfield, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SBG Management Services, Inc. / :
Colonial Garden Realty Co., L.P. : Docket No. C-2012-2304183

v. :

Philadelphia Gas Works :

SBG Management Services, Inc. / :
Simon Garden Realty Co., L.P. : Docket No. C-2012-2304324

v. :

Philadelphia Gas Works :

**ANSWER OF PHILADELPHIA GAS WORKS
TO MOTION TO STRIKE OR DISMISS OF SBG MANAGEMENT SERVICES, INC.**

Philadelphia Gas Works (“PGW” or “Company”), pursuant to 52 Pa. Code § 5.61, hereby files this Answer to the Motion to Strike or Dismiss (“Motion”) filed by SBG Management Services, Inc./Colonial Garden Realty Co., L.P. and Simon Garden Realty Co., L.P. (“SBG”) on October 18, 2017. By its Motion, SBG requests that the Commission dismiss or deny on the merits the Supplemental Petition for Rehearing (“Supplemental Petition”) filed by PGW on October 3, 2017. PGW’s Supplemental Petition seeks a reopening of the record in this proceeding to consider new evidence, but only if the Commission is considering in this complaint proceeding to adopt binding norms and mandate system-wide changes to PGW’s partial payment allocation practices of the nature directed by the Commission’s December 8,

2016 Order for the accounts managed by SBG.¹ In support of this Answer, PGW states as follows.

I. INTRODUCTION AND BACKGROUND

The only issue addressed by PGW's Supplemental Petition concerns proposed changes to the Company's partial payment allocation practices to the extent that such changes are applied to all customers. Partial payments for basic service are payments made by customers that are not sufficient to pay both an outstanding balance for prior basic service and current basic service charges. The Commission's regulations require public utilities to first apply partial payments to outstanding charges for prior basic service before applying them to current basic service charges, and this is precisely what PGW does.² Under PGW's long-standing practice, it has allocated partial payments to outstanding charges for prior basic service before allocating them to current basic service charges, in a manner that is consistent with the express language of the Commission's regulations. With respect to various components of prior basic service, PGW has applied partial payments first to security deposits and late payment charges associated with prior charges before applying them to prior consumption charges. Nothing in the Commission's regulations establishes a hierarchy for the posting of partial payments among the components of prior basic service. Importantly, PGW's approach encourages customers to timely pay their bills in full, so that other customers do not become burdened with paying higher rates due increased uncollectible expenses, carrying costs and bad debt expense.

Since the filing of PGW's Petition for Reconsideration, Clarification and Rehearing ("Reconsideration Petition") on December 23, 2016, new evidence regarding adverse effects on

¹ SBG is the managing agent for real estate owned by the customers of record. *See, e.g.*, Initial Decision, at Findings of Fact Nos. 1-5, 7, 32-34, 45.

² 52 Pa. Code § 56.24.

customers of making changes to these practices on a system-wide basis became available as a result of a proposal being advanced by the Office of Consumer Advocate (“OCA”) in PGW’s base rate proceeding. Through its Supplemental Petition, PGW seeks to reopen the record in this complaint proceeding and proffer the new evidence for inclusion in this record to ensure that the Commission has the benefit of all available relevant information³ before determining to make any changes to these long-standing practices. SBG’s suggestion that PGW’s Petition is somehow untimely,⁴ that PGW has not satisfied the standard required to permit a record reopening⁵ or that granting it would somehow deprive it of its constitutional rights⁶ are all plainly wrong.

While SBG argues that PGW’s Petition is untimely, it is well-settled that the Commission may reopen a record at any time to consider new evidence.⁷ Indeed, Section 5.571 of the Commission’s regulations permits a party to file a petition to reopen at any time after the record is closed for the receipt of further evidence if the conditions of fact or of law have changed as to require, or that the public interest requires, the reopening of the record.⁸ Further, Section 5.407 of the Commission’s regulations expressly permits parties to offer into evidence a portion of the

³ In its Motion, SBG takes the position that PGW’s practices should be changed system-wide. *See, e.g.*, SBG Motion at ¶ 33 (“... it is axiomatic that the practice should be applied to all PGW customers ...”). This negates SBG’s claims that evidence of system-wide impacts should be declared to be irrelevant and inadmissible. *See* SBG Motion at ¶¶ 1, 8-9, 21, 24-34.

⁴ *See* SBG Motion at ¶¶ 1-3, 6, 16-17, 21, 34-35, 39, 44.

⁵ *See* SBG Motion at ¶¶ 7, 14, 15, 18-19, 21, 34, 39, 45.

⁶ *See* SBG Motion at ¶¶ 1, 19, 22-25, 32, 36. *See also* SBG Motion at ¶¶ 1, 6, 13, 27, 31, 32.

⁷ *See Crooks v. Pa. P.U.C.*, 276 A.2d 364 (Pa.Cmwlth. 1971) (Public Utility Code permits the Commission to reopen the record and modify orders when a situation has changed, but not as a way of allowing a party to circumvent the time limitations for an appeal).

⁸ 52 Pa. Code § 5.571.

record in another proceeding before the Commission that is shown to be relevant and material to the instant proceeding.⁹

In filing the Supplemental Petition on October 3, 2017, PGW requested a reopening of the record to provide additional support for its Reconsideration Petition – but only if the Commission determines in this proceeding to consider system-wide changes to PGW’s partial payment allocation practices. It is important to note that PGW’s primary position has been, and remains, that it would be unlawful for the Commission to direct system-wide changes as part of its adjudication of the SBG complaint. Reopening of the record would result in new relevant evidence being available for the Commission to consider before making any determination that PGW’s partial payment allocation practices as they apply to unpaid late payment charges should be modified on a system-wide basis. This evidence was not previously available because the record below dealt with PGW’s application of partial payments as it applied to SBG only.

However, in their Recommended Decision in the base rate proceeding, the Administrative Law Judges (“ALJs”) have suggested that the Commission’s SBG order will address PGW’s partial payment allocation practices for all customers.¹⁰ If the Commission agrees with that language in the Recommended Decision, it is essential for the Commission to also review in this proceeding the evidence presented by PGW in the base rate case about the adverse impacts of modifying PGW’s partial payment allocation practices on a system-wide basis on customers who timely and fully pay their bills.

Further, SBG’s alleged due process concerns can be addressed by remanding this matter to the Office of Administrative Law Judge and SBG can be provided an opportunity to respond

⁹ 52 Pa. Code § 5.407.

¹⁰ *Pa. P.U.C. v. Philadelphia Gas Works*, Docket No. R-2017-2586783, Recommended Decision (served September 8, 2017) at 77.

to the evidence offered by PGW's motion.¹¹ (Of course, PGW should have the right to respond to any new evidence offered by SBG). If the Commission is considering that, in this complaint proceeding, it will adopt binding norms and mandate system-wide changes to PGW's partial payment allocation practices of the nature directed by the Commission's December 8, 2016 Order for the accounts managed by SBG, reopening of this record is essential. Specifically, accepting PGW's testimony addressing the system wide appropriateness and implications of modifying PGW's partial payment allocation procedures, while giving SBG an opportunity to respond on the record to this new evidence and affording PGW the chance to respond, preserves the due process rights of all parties.

II. ARGUMENT

A. Reopening of the Record is Warranted to Consider New Relevant Evidence.

Contrary to SBG's claims of PGW's Supplemental Petition being untimely, it is well-settled that the Commission may reopen a record at any time to consider new evidence.¹² Indeed, Section 5.571 of the Commission's regulations permits a party to file a petition to reopen at any time after the record is closed for the receipt of further evidence if the conditions of fact or of law have changed as to require, or that the public interest requires, the reopening of the record.¹³ The sole purpose of the fifteen-day day period for filing petitions for relief in Section 703(f) of the Public Utility Code¹⁴ and in Section 5.572 of the Commission's regulations¹⁵ is to

¹¹ SBG Motion fails to acknowledge that if the record is reopened that SBG would have the opportunity to respond to PGW's evidence. *See* SBG Motion at ¶¶ 1, 5-6, 13, 17, 20, 24-32.

¹² *See Crooks, supra.*

¹³ 52 Pa. Code § 5.571.

¹⁴ 66 Pa. C.S. § 703(f).

¹⁵ 52 Pa. Code § 5.572.

ensure that the Commission has an opportunity to retain jurisdiction over the proceeding before expiration of the appellate period thirty days after entry of the order.¹⁶ PGW timely filed its Reconsideration Petition of the Commission's December 8, 2016 on December 23, 2016. The Commission issued an Order on December 28, 2016 granting the Reconsideration Petition, pending further review of, and consideration, on the merits, and thereby retained jurisdiction to review the December 8, 2016 Order. Since PGW timely sought reconsideration and was free to seek a reopening of the record at any time to supplement the Reconsideration Petition with new evidence, SBG's arguments in its Motion regarding the timeliness of PGW's Supplemental Petition should be rejected.¹⁷

In addition, reopening of the record would result in new relevant evidence being available for the Commission to consider before making any determination that PGW's partial payment allocation practices as they apply to unpaid late payment charges should be modified on a system-wide basis. Notably, in filing the Supplemental Petition on October 3, 2017, PGW requested a reopening of the record to provide additional support for its Reconsideration Petition – only if the Commission determined in this proceeding to direct system-wide changes to PGW's partial payment allocation practices (consistent with the reading of the PUC's order here by the ALJs in PGW's pending base rate proceeding). PGW's primary position is that the Commission may not lawfully mandate changes to PGW's overall partial payment allocation practices in the context of adjudicating SBG's complaint.¹⁸ However, in the event the Commission disagrees, PGW's Supplemental Petition proffered new evidence for inclusion in the SBG record that it

¹⁶ Pa.R.A.P 1701.

¹⁷ SBG Motion ¶¶ 1, 6, 16, 17.

¹⁸ See *Pa. Human Relations Commission v. Norristown Area School District*, 374 A.2d 671 (Pa. 1977); Regulatory Review Act, 71 P.S. §§ 745.1-745.15.

developed and produced during its base rate proceeding in response to OCA's proposal for changes in PGW's practices for all residential customers.

Although SBG's Motion to Strike focuses on the fact that PGW seeks to proffer evidence from an "unrelated" proceeding and improperly characterizes the evidence as "hearsay,"¹⁹ Section 5.407 of the Commission's regulations expressly permits parties to offer into evidence a portion of the record in another proceeding before the Commission that is shown to be relevant and material to the instant proceeding.²⁰ The testimony and exhibits attached to PGW's Supplemental Petition have been properly authenticated, verified and admitted into the evidentiary record of its base rate proceeding.

Contrary to SBG's claims,²¹ the evidence from the base rate proceeding that PGW has proffered for inclusion in the record here is directly germane to this SBG proceeding, if the Commission decides to apply any directives to all PGW customers, as opposed to only the commercial complainants in this proceeding. In their Recommended Decision in the base rate proceeding, the ALJs have suggested that the Commission's order in this matter will address PGW's partial payment allocation practices for all customers.²² To the extent that the Commission agrees with that language in the Recommended Decision, it is critical for the Commission to also review the evidence presented by PGW in the base rate proceeding showing that PGW's system-wide policy is reasonable and consistent with the law and regulations as well

¹⁹ SBG Motion ¶¶ 1, 19, 20, 31, 32.

²⁰ 52 Pa. Code § 5.407.

²¹ SBG Motion ¶¶ 1, 28.

²² Recommended Decision at 77.

as that a system-wide change would have adverse impacts on PGW's customers who pay their bills in full and on time.

SBG also contends that the additional evidence PGW seeks to proffer was not newly discovered or otherwise unavailable prior to October 3, 2017.²³ However, in the Supplemental Petition, PGW explained that it developed new evidence during the base rate proceeding regarding the effects of system-wide changes that was not reasonably ascertainable during the SBG proceeding, given its limited context of considering whether the application of PGW's partial payment allocation practices *to the complainants* constituted a violation of the Commission's regulations. As noted above, in response to OCA's proposal in the base rate proceeding for the Commission's SBG order to be applied to all residential customers, PGW presented new evidence to describe the adverse impacts of such broad-sweeping proposed changes on PGW's overall operations and on the customers who timely pay their bills in full.²⁴ In short, no reason existed during the SBG proceeding for PGW to present evidence addressing the adverse effects on its customers of system-wide changes to its partial payment allocation practices since the Commission may only provide relief to the individual complainants through an adjudication of complaints.²⁵ The impact of issuing minimal refunds to the accounts managed by SBG²⁶ did not raise any concerns of the magnitude that are raised if PGW is required to change its overall practices in a way that results in all customers being able to indefinitely avoid paying late payment charges.

²³ SBG Motion ¶¶ 5, 39, 45.

²⁴ Supplemental Petition ¶ 31.

²⁵ *See Norristown.*

²⁶ In Paragraph 38 of the SBG Motion, the refund amounts of \$281.36 and \$218.96 relate to the partial payment allocation issue; the other refund amounts noted in that paragraph are unrelated to this issue.

Through the filing of a Motion in Limine in the base rate case, PGW sought to have OCA's proposal for changes to its partial payment allocation practices excluded from consideration on the grounds that they are not part of PGW's tariff. The ALJs denied the Motion, which required PGW to expend significant time and resources to prepare rebuttal and rejoinder testimony and brief the issues, as well as file reply exceptions. Given the extensive record that PGW developed to respond to OCA's proposal that was ultimately determined by the ALJs to be beyond the scope of the base rate proceeding, it is essential to ensure that this additional evidence is before the Commission in this proceeding. The need to submit the Supplemental Petition advancing this proposal was triggered by the ALJs' statement that the Commission would require PGW as part of this SBG proceeding to make any modifications to its partial payment allocation practices as they apply to all customers.

B. Any Due Process Concerns Involving SBG May Be Addressed Upon Reopening of the Record

Reopening of the record to consider new evidence in this SBG proceeding would not violate any due process rights of SBG, as it claims in its Motion.²⁷ As an initial matter, PGW has not sought through its Supplemental Petition to have the Commission review this additional evidence in the context of adjudicating SBG's complaint. Importantly, PGW's Supplemental Petition seeks a reopening of the record only in the event that the Commission determines that changes to PGW's partial payment allocation practices should be made going forward across PGW's entire customer base. The proffered evidence is relevant to that issue and that issue only.

Nonetheless, any due process concerns involving SBG can easily be addressed upon reopening of the record. Among the issues related to due process that are identified by SBG's

²⁷ SBG Motion ¶¶ 1, 5, 13, 22, 31, 32.

Motion to Strike are a lack of notice of the base rate proceeding, its failure to intervene in the base rate proceeding, a lack of notice about the issue being litigated in the base rate proceeding, and the lack of an opportunity for SBG to test the validity of the new evidence, cross examine PGW's witness or submit responsive evidence.²⁸ None of these issues presents a barrier to reopening the record for the Commission to consider the additional evidence proffered by PGW in its Supplemental Petition if it determines to address PGW's system-wide partial payment allocation practices in this proceeding.

As to SBG's allegations (described above), PGW provided the required notice of its proposed base rate increase to its customers. Therefore, SBG (which is the managing agent for real estate owned by the customers of record²⁹) had constructive notice of the base rate proceeding. As PGW did not raise any issues related to its partial payment allocation practices as part of its base rate filing, it was certainly under no obligation to notify SBG that the Commission was being asked by the OCA to review and direct modifications of those practices.

In any event, the Commission has previously crafted a solution that addresses all of the concerns raised by these complainants. Specifically, in *Joint Application of DQE, Inc., Allegheny Power System, Inc. and AYP Sub, Inc., for Approval of the Transfer by merger of the Property and Rights of Duquesne Light Company to Allegheny Power System, Inc.*,³⁰ the Commission granted a petition for reconsideration and reopened the record to accept new evidence. To address due process concerns, the Commission referred the matter to the Office of Administrative Law Judge for the expeditious scheduling of two days of hearings, or such other

²⁸ SBG Motion ¶¶ 1, 5, 19, 20, 22, 31.

²⁹ See footnote 1.

³⁰ Docket No. A-110150F0015; 1998 Pa. PUC LEXIS 135 (Order entered June 29, 1998).

alternative dispute resolution procedures as may be appropriate, to allow opposing parties to cross-examine witnesses or otherwise present their views. Following this approach, the matter can be remanded to the Office of Administrative Law Judge and SBG can be provided an opportunity to respond to the evidence offered by PGW's motion. (Of course, PGW should have the right to respond to any new evidence offered by SBG). This solution would give the complainants an opportunity to test the validity of the new evidence, cross examine PGW's witness and present responsive testimony. It would also render moot any concerns about its lack of notice of the base rate proceeding and the litigation of issues related to PGW's partial payment allocation practices in that proceeding.

C. PGW's Partial Payment Allocation Practices are Lawful and Benefit Customers Who Timely Pay Their Bills in Full.

During the SBG proceeding, PGW demonstrated that its partial payment allocation practices are lawful. As PGW has shown, the Commission's regulations governing the application of partial payments to customers only require that such payments be first applied to prior basic service before being applied to current basic service. PGW's practices comply with that directive to the letter.³¹ While the Commission did not initially agree with PGW in the December 8, 2016 Order, the Commission later voted to reconsider that order on its merits. Therefore, any prior findings as to the legality of PGW's partial payment allocation practices are irrelevant. Yet, SBG repeatedly refers throughout the Motion to PGW's practices as being unlawful or illegal.³² The legal issues have been addressed previously and PGW will not repeat them here.³³ For purposes of the Supplemental Petition, the only question is whether the

³¹ 52 Pa. Code § 56.24.

³² SBG Motion ¶¶ 10, 21, 32, 33, 36, 38, 39, 40.

³³ See Reconsideration Petition; Supplemental Petition.

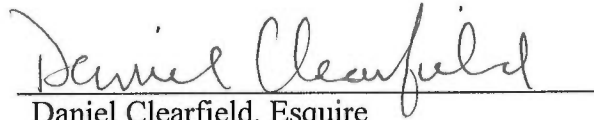
Commission should consider the record developed in the base rate proceeding before making any determination as to whether to direct PGW to modify its partial payment application practices for all customers.

SBG also makes several references to the impacts of PGW's current partial payment allocation practices on customers.³⁴ This whole issue arises due to customers like those managed by SBG not paying their bills in full or on time. Through the Supplemental Petition, PGW is seeking an opportunity to present new evidence that demonstrates the adverse impacts on customers who do pay their bills in full and on time if its partial payment allocation practices are modified in a manner that precludes PGW from zeroing out late payment charges for prior basic service before applying partial payments to consumption charges for prior basic service. As PGW's testimony and exhibits in the base rate case showed, modifications of the nature proposed by OCA would allow customers to indefinitely delay paying late payment charges that were properly assessed on them. The result of such an approach is that customers who timely pay their bills in full would shoulder a greater burden in the form of higher rates. This outcome is particularly troubling when a large commercial customer fails to pay its bills in time and in full, and residential customers must then pay their carrying costs.

Finally, SBG's Motion contains various references to testimony in this proceeding, excerpts from the ALJ's Initial Decision and the Commission's order, and extraneous quotes from Commission regulations and court decisions. In response, PGW notes that to the extent they are relevant to the disposition of the Supplemental Petition, all of these documents speak for themselves. As to any averments contained in the Motion which are not expressly addressed by this Answer, PGW denies them consistent with the discussion herein.

³⁴ SBG Motion ¶¶ 21, 36, 49.

Respectfully submitted,



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