

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105-3265**

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

v.

Philadelphia Gas Works

**Public Meeting held January 18, 2018
2304183-OSA**

**Docket Nos. C-2012-2304183
C-2012-2304324**

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

v.

Philadelphia Gas Works

**JOINT MOTION OF CHAIRMAN GLADYS M. BROWN
AND COMMISSIONER JOHN F. COLEMAN, JR.**

Before the Commission for consideration and disposition is the Petition for Reconsideration, Clarification, and/or Rehearing (Petition) filed by Philadelphia Gas Works (PGW) in the above-captioned proceedings. The Petition seeks reconsideration of the Commission's Opinion and Order entered December 8, 2016 (*December 8 Order*), which affirmed the Initial Decision of Administrative Law Judge (ALJ) Eranda Vero.

By Initial Decision, ALJ Vero found that PGW violated 52 Pa. Code § 56.24 (Application of partial payments among several bills for public utility service) by applying payments to current late fees before paying down prior overdue balances. The ALJ directed PGW to issue a bill credit and assessed a civil penalty in the amount of \$2,000 for PGW's violation of 52 Pa. Code § 56.24. The ALJ also found that PGW improperly assessed late payment charges to overdue amounts subject to a municipal lien and imposed a civil penalty in the amount of \$25,000 to deter PGW from applying its tariff and rates to lien-ed indebted amounts. The ALJ also directed PGW to issue a refund of over \$500,000 to SBG Management Services, Inc. (SBG) for the improperly assessed late payment charges.

PGW filed Exceptions, arguing that it should not have to choose between pursuing the debt with a lien and imposing late charges per its tariff. PGW argues that Chapter 14 gives it the right to use the lien process, and that the Commission has no jurisdiction over the 10% interest charges established in the Municipal Claim and Tax Lien Law (P.L.207, No.153) (MCTLL). Our *December 8 Order* affirmed the ALJ's decision on both the partial payment issue and the late payment charge issue. Within forty-five (45) days of the entry of the Order, PGW was ordered to certify to the Commission that it has modified its business practices, including services performed by third party vendors, to bill in compliance with this Order.

On December 23, 2016, PGW filed the instant Petition for Reconsideration arguing that:
1) PGW can impose late fees on a debt where a lien has been filed up until a final judgment on

the lien is entered by the court; and 2) that the Commission failed to give effect to Sections 2212(n) and 1414 of the Public Utility Code (provisions that allow PGW to file liens to collect debt).

On October 3, 2017, PGW filed a Supplemental Petition for Rehearing to fully explore the legal, policy, and operational effect of the December 8th Order. PGW argues that 45 days is not enough time to change its billing system to comply with the Order and that it needs 57 weeks to comply.

The standards for granting reconsideration are set forth in *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553 (1982). A petition for reconsideration is likely to succeed only when it raises “new or novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by the Commission. *Duick*, 56 Pa. P.U.C. at 559. Upon review, we do not believe PGW has met the *Duick* standard here.

We find that reconsideration is not merited and reject PGW’s position that the Commission is divested of subject matter jurisdiction only when a municipal lien becomes a final judgment.¹ The language of Section 1414 of the Code, 66 Pa. C.S. § 1414, referenced by PGW, Petition at 8, n. 8-9, strongly counsels against the position of PGW that the Commission is divested of jurisdiction only when a municipal lien becomes a final judgment. Section 1414(a) of the Code states, in pertinent part:

§ 1414. Liens by city natural gas distribution operations.

(a) General rule.--A city natural gas distribution operation furnishing gas service to a property is entitled to impose or assess a municipal claim against the property and file as liens of record claims for unpaid natural gas distribution service and other related costs, including natural gas supply, in the court of common pleas of the county in which the property is situated or, if the claim for the unpaid natural gas distribution service does not exceed the maximum amount over which the Municipal Court of Philadelphia has jurisdiction, in the Municipal Court of Philadelphia, pursuant to sections 3 and 9 of the act of May 16, 1923 (P.L.207, No.153), referred to as the Municipal Claim and Tax Lien Law, and Chapter 22 (relating to natural gas competition). (Emphasis added)

Upon review, Section 1414(a) of the Code reiterates the unqualified right of the City of Philadelphia and PGW, previously established in the MCTLL, to pursue collection of indebtedness for unpaid utility bills through the filing of a lien of record with the appropriate court. Specifically, the imposition of a municipal lien to secure payment of a debt for gas services supplied is a civil action for collection of a “municipal claim” under the MCTLL. As a

¹ PGW’s argument in this regard does not appear to be consistent with its practice before the Commission to file a preliminary objection to a formal complaint involving a dispute over a municipal lien on the ground that the Commission lacks subject matter jurisdiction over the *imposition* of a lien. *See. e.g., Jacqueline Stevens v. Philadelphia Gas Works*, C-2015-2472728 (Preliminary Objections and Motion to Strike dated April 8, 2015), para. 11, p. 5. Consequently, it appears that historically, PGW does not require a lien to become a final judgment as condition precedent to moving to dismiss a lien-related complaint on jurisdictional grounds.

“municipal claim,” the civil action regarding the claim cannot be maintained concurrently with an administrative action or process for the same subject matter, *i.e.*, debt for a sum certain resulted from a past due PGW gas bill.²

Moreover, the plain language of Section 1414 of the Code divests the Commission of subject matter jurisdiction over the indebtedness for unpaid utility bills subject to a municipal lien regardless of whether a final judgment has been entered on the lien.³ There is no language in the Code giving the City of Philadelphia and/or PGW the right to simultaneously collect or assess charges for the same indebtedness in both forums. To the contrary, Section 1414(a) of the Code references Section 2212(n) of the Code, 66 Pa. C.S. §2212(n), which specifically states that “nothing contained in this title shall abrogate the power of a city natural gas distribution operation to collect delinquent receivables through the imposition of liens” under the MCTLL. This language supports that at the time a municipal lien is imposed to secure payment for unpaid PGW gas bill, the proceeding is exclusively a matter of judicial, not administrative jurisdiction.

In its Petition, PGW avers it is unclear how things will proceed under the *December 8 Order* as written. PGW notes that under the Order, once a municipal lien exists, the Commission relinquishes its jurisdiction to hear billing disputes and to rule upon agreements between the utility and that customer to decrease the amount of arrearages. According to PGW, this means that under the *December 8 Order*, the Commission’s formal complaint procedures may no longer be available to PGW’s customers once a municipal lien exists.

In our view, the Commission’s approach in lien-related formal complaints will not change under the *December 8 Order*. Namely, with a formal complaint that challenges the imposition of a municipal lien for an unpaid PGW gas bill, our precedent is clear that the Commission does not have subject matter jurisdiction over the complaint. *See, e.g., Jacqueline Stevens v. Philadelphia Gas Works*, C-2015-2472728 (Final Order entered July 30, 2015). However, to the extent a formal complaint that challenges the imposition of a lien also raises a jurisdictional billing or service issue, the Commission does have subject matter jurisdiction over that portion of the complaint. *See, e.g., Dennis Vicario v. Philadelphia Gas Works*, C-2010-2213955 (Opinion and Order entered November 16, 2011); *Habana Holding Corporation v. PGW*, C-2014-2413775, Final Order entered July 24, 2014). This approach is nothing new, and we believe PGW’s concerns about process are unfounded.

Also, PGW’s Supplemental Petition claimed that it needed 57 weeks to modify its billing system to change the out of order application of payments to late fees before charges for usage. PGW stated that software changes and systems testing could not be carried out in the 45-day compliance period established in our *December 8 Order*. PGW failed to submit compelling evidence supporting a compliance period of 57 weeks. We note that PGW has been on notice of

2 In its Petition, PGW discusses the difference between “inchoate” and “choate” liens. However, we do not believe any differences between these two types of liens has any bearing on a jurisdictional analysis. Under the MCTLL, there is an inherent right of a municipality to collect a claim through the imposition of a lien as an *in rem* guarantee of payment, and what matters with our jurisdictional analysis is that the imposition of a municipal lien by the City of Philadelphia to secure payment of a debt owed to PGW is a “municipal claim” under the MCTLL.

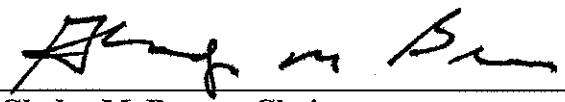
3 *See* 1 Pa. C.S. 1921(b) (“When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.”)

its violation of 52 Pa. Code § 56.24 since 2011. Because this is a billing mechanism which affects any similarly situated PGW customer, it would not be prudent to grant a lengthy compliance period. Therefore, we believe that a 90-day compliance period is sufficient for the necessary billing modifications.


THEREFORE, WE MOVE:

1. That the December 23, 2016 Petition for Reconsideration of the Commission's December 8, 2016 Opinion and Order, filed by Philadelphia Gas Works is denied.
2. That the Supplemental Petition for Reconsideration of the Commission's December 8, 2016 Opinion and Order, filed on October 3, 2017, by Philadelphia Gas Works is denied.
3. That Philadelphia Gas Works has ninety (90) days from the date of the entry of this Opinion and Order, in which to comply with Ordering Paragraph No. 10 set forth in the December 8, 2016 Opinion and Order in this docket.
4. That Philadelphia Gas Works shall credit and refund the monies owed to SBG Management Inc. within fifteen (15) days of entry of this Final Opinion and Order.
5. That the Office of Special Assistants draft and Opinion and Order consistent with this Motion.

January 18, 2018
Date



Gladys M. Brown, Chairman



John F. Coleman, Jr., Commissioner