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September 25, 2018

**VIA ELECTRONIC FILING**

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> 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' Petition for Stay Pending Judicial Review, in the above-referenced matters. Copies are being served in accordance with the attached Certificate of Service.

If you have any questions regarding this filing, please contact me at your convenience.

Sincerely,



Daniel Clearfield

DC/jls  
Enclosure

cc: Hon. Gladys M. Brown, Chairman (w/enc)  
Hon. Andrew G. Place, Vice Chairman (w/enc)  
Hon. Norman J. Kennard, Commissioner (w/enc)  
Hon. David W. Sweet, Commissioner (w/enc)  
Hon. John F. Coleman, Jr., Commissioner (w/enc)  
Certificate of Service (w/enc)

**CERTIFICATE OF SERVICE**

I hereby certify that this day I served a copy of PGW's Petition for Stay Pending Judicial Review upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

**Via First Class Mail**

Office of Consumer Advocate  
5<sup>th</sup> Floor, Forum Place Bldg.  
555 Walnut Street  
Harrisburg, PA 17101-1921

Office of Small Business Advocate  
Commerce Bldg., Suite 1102  
300 North Second St.  
Harrisburg, PA 17101

Bureau of Investigation & Enforcement  
PA Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor, West  
Harrisburg, PA 17120

Office of Special Assistants  
PA Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 3<sup>rd</sup> Floor, East  
Harrisburg, PA 171020

Bureau of Technical Utility Services  
PA Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 3<sup>rd</sup> Floor, East  
Harrisburg, PA 17120

Date: September 25, 2018

  
Daniel Clearfield, Esq.

**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 :

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**PETITION FOR STAY  
PENDING JUDICIAL REVIEW**

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Philadelphia Gas Works (“PGW” or “Company”) respectfully files this Petition for Stay Pending Judicial Review (“Petition”), pursuant to Pa. R.A.P. 1781(a) and 52 Pa. Code § 5.572, requesting that the Commission grant PGW a stay or supersedeas (collectively, a “stay”) pending the disposition of the appeal by PGW of the Opinion and Order issued December 8, 2016 (“December 2016 Order”) and the related orders denying reconsideration that were issued on May 18, 2018 (“May 2018 Order”) and on August 23, 2018 (“August 2018 Order”) (collectively, the “Orders”) in the above-captioned matter.

Confronting issues of first impression, the Commission entered the subject Orders which, *inter alia*, direct substantial modifications to PGW’s billing systems and practices. The Orders have been appealed by PGW. This Petition seeks to preserve the *status quo*, i.e., to stay any compliance, application or enforcement of Orders pending the ultimate disposition of the PGW’s

appeal from said Orders and any further proceedings relating thereto. A PUC stay of the Orders pending appeal will mean that PGW will not be forced to bear the substantial time effort and expense of complying with the PUC prior to a final determination of its merits.

In support of this Petition, PGW avers as follows:

### **Background**

1. PGW is a collection of assets owned by the City of Philadelphia (“City”) and used [for distributing natural gas] to the public in the City and County of Philadelphia. PGW is a “city natural gas distribution operation” and therefore a “natural gas distribution company” as defined in Sections 102 and 2202 of the Public Utility Code, 66 Pa.C.S. §§ 102, 2202.

2. By the Orders, the Commission also found that PGW cannot apply its tariff-approved late payment charges<sup>1</sup> to past due balances accrued for service once those overdue balances are subject to a recorded municipal lien under The Municipal Claims And Tax Lien Law<sup>2</sup> (“MCTLL”).<sup>3</sup> The Commission directed PGW to (a) issue credits/refunds to SBG and (b) to make necessary system-wide modifications to its entire billing system and lien practices within 90 days.

3. PGW has filed a Petition for Review (in the nature of an appeal) from the Final Order (“appeal”) that was docketed by the Commonwealth Court at No. 1291 C.D. 2018.

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<sup>1</sup> 52 Pa.Code § 56.22 (Accrual of late payment charges); PGW Gas Service Tariff - Pa. PUC No. 2, Section 26 Page 4.2. Finance Charge on Late Payments.

<sup>2</sup> 53 P.S. §§ 7101, *et. seq.*

<sup>3</sup> Pursuant to the MCTLL, the City, as owner of PGW, has the right to collect on municipal claims for amounts owed to PGW for gas service provided to a service address. That being said, the “right” to file a municipal lien may be referred to as right of the City or PGW (or both). Both Section 1414 and Section 2212(n) of the Public Utility Code authorize “a city natural gas distribution operation” to file liens for unpaid gas bills. PGW is that “operation.” It is not a separate legal entity, but rather an instrumentality of the City, which is the actual entity that is authorized to file a lien under the MCTLL. That is why the City liened properties for unpaid gas bills before the Commission obtained jurisdiction over PGW in 2000, and why, even now, gas liens are filed in the name of the City. These are ordinary municipal liens.

4. PGW has served copies of this Petition on the following: the Pennsylvania Office of Consumer Advocate, the Pennsylvania Office of Small Business Advocate, the Commission's Bureau of Investigation and Enforcement, the Commission's Office of Special Assistants, the Commission's Bureau of Technical Utility Services, and to each of the Commissioners. If the Commission concludes that additional notice is necessary, PGW will provide such additional notices as the Commission may direct.

### **Legal Standard**

5. The Commission has authority to entertain this Petition pursuant to Pa.R.A.P. 1781(a), which states that: "Application for a stay or supersedeas of an order or other determination of any government unit pending review in an appellate court on petition for review shall ordinarily be made in the first instance to the government unit." *See also* Pa.R.A.P. 1701(b)(1).

6. A stay is appropriate and necessary when a party demonstrates that (1) it is likely to prevail on the merits; (2) it will suffer irreparable injury without the requested relief; (3) issuance of a stay will not substantially harm interested parties in the proceedings; and (4) issuance of the stay will not adversely affect the public interest. *See PUC v. Process Gas Consumers Group*, 467 A.2d 805 (Pa. 1983).

### **Request for Stay Pending Appeal**

7. A stay would maintain the *status quo* by preserving PGW's billing systems and lien practices, and the charges on the subject gas accounts while PGW pursues its appeal before the Courts. These systems and practices have been in place since before July 1, 2000,<sup>4</sup> when

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<sup>4</sup> Effective July 1, 2000, and pursuant to the passage of the Pennsylvania Natural Gas Choice and Competition Act, 66 Pa.C.S. §§ 2201-2212, PGW came under the regulatory jurisdiction of the Commission.

PGW came under the jurisdiction of the PUC, and the disputed charges on the subject gas accounts stem from 2009<sup>5</sup> to 2012. There is no immediate need either to change PGW's systems and practices or to issue refunds (credits) to the subject accounts before PGW can avail itself of the appellate process. It is far more practical, and in the public interest, to wait until a final decision is handed down by the Courts before PGW is forced to expend considerable time and money modifying its billing systems and practices for all customers and issues refunds (or credits) to the subject accounts.

### **PGW is likely to succeed on the merits**

8. In *Process Gas*, the Pennsylvania Supreme Court noted that the tribunal which had just rendered an adverse decision could nonetheless determine that an applicant for stay had presented a substantial case on the merits even though that tribunal disagreed that its own order would likely be reversed. *See Process Gas*, 467 A.2d at 809, n8 (“[T]here are ample instances where the lower tribunal could find that the applicant has presented a substantial case on the merits even though it disagrees.”).

9. The Commission has said that the *Process Gas* criteria “require the balancing of all interests, including the public, where applicable.” *PUC v. HIKO Energy, LLC*, Docket Nos. P-2015-2519419 and C-2014-2431410, Opinion and Order entered January 28, 2016 at page 11. Further, the Commission has observed that: “[I]n deciding whether to stay one of our orders pending appeal, this Commission should not indulge in a further review of the case. Rather, this Commission should concentrate solely on the effect our Order will have pending appeal.” *PUC v. Makovsky Brothers, Inc.*, 53 Pa. PUC 510, 511 (1979).

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<sup>5</sup> The period covered by the statute of limitations began on May 11, 2009.

10. Here, as in *Process Gas*, there are unquestionably significant questions of Commission legal authority so a substantial case on the merits has been made by PGW.<sup>6</sup> Given the likelihood that the Commonwealth Court would find these challenges as significant and substantial, and that the Commission itself has acknowledged that the subject proceeding raises issues of first impression,<sup>7</sup> PGW urges the Commission to stay any compliance, application or enforcement of the Orders.

### **PGW will suffer irreparable injury without a stay**

11. The Orders inflict immediate, substantial, and irreparable harm on PGW. PGW relies upon municipal liens for fiscal stability.<sup>8</sup> The Orders call into serious question PGW's ability to continue to use municipal liens to help in the collection of arrearages for unpaid gas service.

12. Forcing PGW to comply with the requirements in the Orders is irreparable harm *per se*. As explained herein and in PGW's Petition for Review, PGW contends that obligations imposed by the Final Order violate applicable statutory provisions. Such violations result in *per se* irreparable harm. *See, e.g., PUC v. Israel*, 356 Pa. 400, 406, 52 A.2d 317, 321 (1947).

13. The Orders have an unrealistically short transition period (90 days) for imposing significant and extensive obligations on PGW regarding PGW's systems and practices. These obligations place PGW at risk of immediate noncompliance where PGW did not or could not conform to the timeframe for compliance as articulated by the Orders. This alone justifies the stay pending the appeal.

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<sup>6</sup> PGW incorporates by reference the issues raised in its Petition for Review with the Commonwealth Court.

<sup>7</sup> *See, e.g.*, December 2016 Order at p. 61, 103 and 106; May 2018 Order at p. 15; August 2018 Order at p. 5.

<sup>8</sup> *See* the attached Verified Statement of Bernard Cummings, which is incorporated herein by reference.

14. Compliance with the Orders pending the ultimate disposition of PGW's appeal from the Orders constitutes irreparable harm in that PGW will be required to expend substantial money, time, and energy to change its systems and practices.<sup>9</sup> Unless a stay pending appeal is granted, the Orders will require that changes to PGW's systems and practices be made under a timeframe that will deprive PGW of meaningful access to judicial process. The changes, once made, are not reversible by merely hitting an "undo" button. Moreover, there is no way for PGW to immediately recoup dollars spent on changing its systems and practices (or to easily reverse those changes — if PGW succeeds on appeal), so there is irreparable injury to PGW. Since some (or all) of the costs for such changes will occur before start of PGW's next base rate, there is serious doubt that PGW will be able to recover the costs of such changes from ratepayers.

#### **Other interested parties will not be substantially harmed by a stay**

15. The only other party in this proceeding is SBG.

16. The issuance of a stay pending appeal will not substantially harm SBG or the subject accounts. SBG's interests are monetary. If PGW loses its appeal, the delay due to a stay will merely lead to refund (credits) occurring in a later time period, so there is no substantial harm to SBG or the subject accounts in granting a stay pending the ultimate disposition of the PGW's appeal from the Orders.

#### **A stay will not adversely affect the public interest**

17. The issuance of a stay pending appeal will not adversely affect the public interest. The stay is related to PGW's billing and practices, and the charges on the subject gas accounts.

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<sup>9</sup> See the attached Verified Statement of Denise Adamucci, which is incorporated herein by reference.



The stay will not impact public safety. This Commission found it necessary to exercise its discretion under the Public Utility Code to mandate changes to PGW's systems and practices **and** to impose civil penalties in an attempt to secure corrective action on the part of PGW to modify a long-standing practice of PGW which the PUC nevertheless decided was a violation of law. It is PGW's position that those corrective actions — including, but not limited to, the civil penalties — are based on the incorrect determinations that PGW has failed to comply with applicable requirements under the Commission's jurisdiction. Nevertheless, if PGW loses its appeal, the delay due to a stay will merely lead to corrective actions occurring in a later time period **without any risk to health or safety of the public**, so there is no substantial harm to the public interest or the Commission in granting a stay pending the ultimate disposition of the PGW's appeal from the Orders.

### **Request for Expedited Action**

18. PGW is proposing that the Commission grant the requested stay in an expedited manner. This relief is integral to preserving the *status quo*. The Orders, *inter alia*, direct that PGW complete changes to its systems and practices on or before Wednesday, November 21, 2018. PGW requests that the Commission direct that any response to this Petition be filed on or before Monday, October 1, 2018 so that the Commission may grant the requested relief on or before **Thursday, October 4, 2018**, so as to make it unnecessary to make a filing (under Pa.R.A.P. 1781(c)) with the Commonwealth Court requesting stay pending appeal.

## Conclusion

WHEREFORE, PGW respectfully requests that the Commission issue an Order:

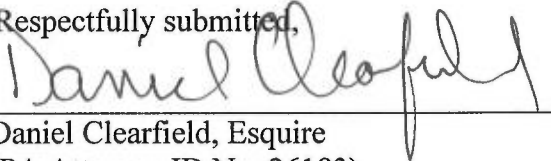
- A. granting this Petition for Stay;
- B. entering an Order staying the compliance, application or enforcement of the Final Order pending the ultimate disposition of PGW's appeal from the Orders;
- C. granting such further relief in favor of PGW as may be just and reasonable under the circumstances.

Laureto A. Farinas, Esquire  
Senior Attorney

Philadelphia Gas Works  
800 W. Montgomery Ave.  
Philadelphia, PA 19122

Date: September 24, 2018

Respectfully submitted,



Daniel Clearfield, Esquire  
(PA Attorney ID No. 26183)  
Karen O. Moury, Esquire  
(PA Attorney ID No. 36879)  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, 8th Floor  
Harrisburg, PA 17101  
(717) 237-6000 (phone)  
(717) 237-6019 (fax)

Attorneys for Philadelphia Gas Works

## Verification

I, Carl R. Shultz state that I am an Attorney of Record for Philadelphia Gas Works (“PGW”) and that as such I am authorized to make this verification on its behalf. I hereby state that the facts contained in the foregoing document are true and correct (or are true and correct to the best of my knowledge, information and belief). I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.



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Carl R. Shultz, Esquire  
Attorney for Philadelphia Gas Works

**Attachment A**

PUC Docket Nos.  
C-2012-2304183 and C-2012-2304324

Verified Statement of  
Bernard Cummins

**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 :

**VERIFIED STATEMENT OF BERNARD CUMMINGS**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

I, Bernard Cummings, declare as follows:

1. My name is Bernard Cummings, and my business address is 800 West Montgomery Avenue, Philadelphia, PA 19122.
2. I am Vice President of Customer Service and Collections (“Vice President”) for the Philadelphia Gas Works (“PGW”).
3. As Vice President for PGW, I am responsible for the following at PGW: Customer Service Center, District Offices, Residential, Commercial and Industrial Collections, Remittance Processing and Billing, and back office Account Management.
4. In this capacity, I am authorized to provide information concerning the impact on PGW’s operations of the Opinions and Order of the Pennsylvania Public Utility Commission (“Commission” or “PUC”) issued December 8, 2016 (“December 2016 Order”) and the related

Opinions and Orders denying reconsideration that were issued on May 18, 2018 (“May 2018 Order”) and on August 23, 2018 (“August 2018 Order”) (collectively, the “Orders”).

5. I am advised that, under the Pennsylvania Municipal Claims and Tax Lien Law (“MCTLL”), a municipal lien is automatically created when PGW provides natural gas services to a property. If the customer does not pay for natural gas services provided by PGW, the lien (which was created by operation of law) may be perfected by a filing with the appropriate local court - where the lien is publicly docketed by the Prothonotary.

6. PGW and the City of Philadelphia relies upon municipal liens authority for PGW’s fiscal stability. Each year on average 25,000 liens (which were created by operation of law) are perfected by a filing with the appropriate local court - where the lien is publicly docketed by the Prothonotary.

7. Typically, the City does not attempt to execute upon (or enforce) the perfected liens; it waits for the property (subject to the recorded lien) to either be sold or refinanced such that the owner needs to clear title to their real estate.

8. The Orders call into serious question PGW’s ability to continue to use municipal liens to help in the collection of arrearages for unpaid gas service. In the Orders, the Commission determined that the existence of a recorded municipal lien has a preemptive effect on the Commission’s jurisdiction.

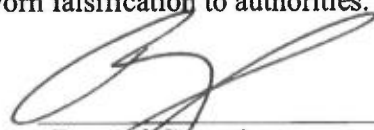
9. If it determined that jurisdiction over the past due amounts moves from the Commission to the jurisdiction of the courts once a debt becomes subject to a recorded municipal lien, then PGW will need to revise its entire collection systems and practices to comply with the mandates in the Orders. For example, PGW must stop (i) issuing PUC-jurisdictional bills containing past due amounts that are subject to a recorded municipal lien and (ii) applying any other portion of

its Commission-approved tariff to past due amounts that are subject to a recorded municipal lien. Further, PGW would have to somehow revise its termination and collection process to take account of the end of Commission jurisdiction.

10. These billing system and operational changes will have a significant negative impact on PGW and on PGW's ratepayers. The dollar amount represented by the recorded liens is, on average, over \$20,000,000. The costs of these billing system and operational changes would be well over a million dollars.

I, Bernard Cummings, hereby state that I am the Vice President of Customer Service and Collections for PGW, that I am authorized to make this verification on its behalf, and that the facts set forth in the foregoing Verified Statement are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: September 21, 2018



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Bernard Cummings  
Vice President of Customer Service  
and Collections  
Philadelphia Gas Works

**Attachment B**

PUC Docket Nos.  
C-2012-2304183 and C-2012-2304324

Verified Statement of  
Denise Adamucci



**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 :

**VERIFIED STATEMENT OF DENISE ADAMUCCI**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

I, Denise Adamucci., declare as follows:

1. My name is Denise Adamucci, and my business address is 800 West Montgomery Avenue, Philadelphia, PA 19122.
2. I am Vice President of Regulatory Compliance and Customer Programs (“Vice President”) for the Philadelphia Gas Works (“PGW”).
3. As Vice President for PGW, I am responsible for the Special Projects Group for Customer Affairs which, among other things, reviews procedures and works with PGW’s information services group to adjust to changes in PGW customer service and billing.
4. In this capacity, I am authorized to provide information concerning the impact on PGW’s operations of the Opinions and Order of the Pennsylvania Public Utility Commission (“Commission” or “PUC”) issued December 8, 2016 (“December 2016 Order”) and the related

Opinions and Orders denying reconsideration that were issued on May 18, 2018 (“May 2018 Order”) and on August 23, 2018 (“August 2018 Order”) (collectively, the “Orders”).

5. The Orders direct PGW to, among other things, make necessary system-wide modifications to its entire billing system and lien practices within 90 days. This means that the Orders, as written, will require that all of the modifications to PGW’s systems and practices must be in place on or before Wednesday, November 21, 2018.

6. PGW will be required to expend substantial money, time, and energy to change its systems and practices. The modifications mandated in the Orders are extensive.

7. With respect to PUC directives on liens, I am advised that if it is determined that jurisdiction over the past due amounts moves from the Commission to the jurisdiction of the courts once a debt becomes subject to a recorded municipal lien, PGW will need to revise its collection and billing systems to comply with the mandates in the Orders. If, for example, PGW must stop (i) issuing PUC-jurisdictional bills containing past due amounts that are subject to a recorded municipal lien and (ii) applying any other portion of its Commission-approved tariff to past due amounts that are subject to a recorded municipal lien, significant modifications may be required.

8. Related modifications may include the creation of a separate billing system or extensive modifications to the current billing system, as well as modifications to PGW’s lien management system, and billing and regulated termination system processes. These or other such system modifications would require new code development, and wide-ranging quality assurance and use acceptable testing and could require the purchase of new technology. Such extensive modifications would not be able to be accomplished within 90 days.

9. PGW does not have a rough estimate for the amount of money it would take to make the lien modifications described herein.

10. There is no way for PGW to immediately recoup dollars spent on changing its systems and practices (or to easily reverse those changes — if PGW succeeds on appeal). Since some (or all) of the costs for such changes will occur before start of PGW's next base rate, I am advised that there is serious doubt that PGW will be able to recover the costs of such changes from ratepayers.

I Denise Adamucci, hereby state that am the Vice President of Regulatory Compliance and Customer Programs for the Philadelphia Gas Works, and am authorized to make this verification on its behalf, and that the facts set forth in the foregoing Verified Statement are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: September 21, 2018



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Denise Adamucci  
Vice President of Regulatory  
Compliance and Customer Programs  
Philadelphia Gas Works