



SBG Management Services, Inc.

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April 30, 2019

The Honorable Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street
Commonwealth Keystone Building, 2nd Floor
Harrisburg, PA 17120

Re: SBG Response to PGW's Petition for Reconsideration in the matters of SBG et al v. PGW- PUC Dockets: C-2012-2308454; C-2012-2308462; and C-2012-2308465; C-2012-2304167; C-2012-2304215 and C-2012-2304303; Previously filed Response in 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

Dear Secretary Chiavetta:

Please accept for filing SBG's Response/Answer and the attached exhibit which is filed in opposition to PGW's petition for Reconsideration of Orders entered by the PUC in the dockets referenced above. PGW's issues presented are the same as those averred in PGW's Petition for Stay Pending Review which the Commission denied on March 28, 2019. Rather than be duplicative in its response, please accept for filing SBG's Response and attached exhibit as a comprehensive response opposing PGW's Petitions for Reconsideration for all above-referenced matters. SBG et. al has previously filed and attached its comprehensive response to PGW's petitions which should be incorporated by reference to the subsequent filings by PGW. Thank you for your consideration

Sincerely yours:


/s/ Donna S. Ross

Donna S. Ross, Esq.

Counsel for SBG et. al Complainants

CERTIFICATE OF SERVICE

I, Donna S. Ross, hereby certify that this day I served a copy of SBG MANAGEMENT'S RESPONSE IN ANSWER TO PGW'S PETITION FOR RECONSIDERATION *IPSO FACTO* PGW'S 2nd REQUEST FOR STAY OF IMPLEMENTATION ORDER 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 and email

Daniel Clearfield, Esq.
Carl Shultz, Esq.
Karen O. Moury, Esq.
Eckert Seamans Cherin & Mellott, LLC
213 Market Street 8th Floor
Harrisburg, PA 17101

Phil Pulley
Kathy Downs Treadwell
SBG Management Services, Inc.
P.O. Box 549
Abington, PA 19001

via Hand Delivery

Date: April 30, 2019

✓ Amended for Service to SBG et al. 5/2/2019



Donna S. Ross

Donna S. Ross, Esq. for SBG et al

CERTIFICATE OF SERVICE

I, Donna S. Ross, hereby certify that this day I served a copy of SBG MANAGEMENT'S RESPONSE IN ANSWER TO PGW'S PETITION FOR RECONSIDERATION *IPSO FACTO* PGW'S 2nd REQUEST FOR STAY OF IMPLEMENTATION ORDER 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

Ms. Rosemary Chiavetta, Secretary
PA Public Utility Commission
400 North Street
Commonwealth Keystone Bldg., 2nd Floor
Harrisburg, PA 17120

Hon. Eranda Vero, ALJ (courtesy)
PA Public Utility Commission
801 Market St
Philadelphia, PA 19107

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

Date: April 30, 2019, Amended to added Service to Complainants SBG et al. 5/2/2019

By: ls/ Donna S. Ross

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SBG Management Services, Inc. : C-2012-2304183
Colonial Garden Realty Co., L.P.

v. :

Philadelphia Gas Works :

SBG Management Services, Inc./ : C-2012-2304324
Simon Garden Realty Co., L.P.

v. :

Philadelphia Gas Works :

**SBG MANAGEMENT’S RESPONSE IN ANSWER TO PGW’S
PETITION FOR RECONSIDERATION
IPSO FACTO PGW’S 2nd REQUEST FOR STAY OF IMPLEMENTATION ORDER
PENDING JUDICIAL REVIEW**

I. INTRODUCTION

SBG Management Services, Inc./Simon Garden Realty Co., L.P. and Colonial Garden Realty Co., L.P. (“SBG”) respectfully file this Response in Answer to PGW’s Petition For Reconsideration filed on April 12, 2019. This is PGW’s *fifth* (5th) filing of a Petition for Reconsideration of the Commission’s Orders. In reality, PGW is using the Commission’s procedural rules to affect a Stay of the Commission’s Implementation Order Dated December 8, 2016 pending judicial review pursuant to Pa.R.A.P. 1781(a) and 52 Pa.Code § 5.572. It is SBG Complainants’ belief that PGW’s plan is to use the Commission’s procedural rules and regulations at 66 Pa.S.C § 703 and 52 Pa.Code §5.572 and the appellate review process as a means to circumvent compliance under the code for an additional six (6) years or more, unreasonably delaying justice for the SBG complainants and all other PGW ratepayers.

In responding to a Petition for Reconsideration, the Commission states “any issue that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length

each contention or argument raised by the parties.” *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

The Code establishes a party’s right to seek relief following the issuance of the Commission’s final decision pursuant to Subsections 703(f) and (g), 66 Pa. C.S. §§ 703(f) and 703(g), relating to rehearing, as well as the rescission, clarification and amendment of orders. Requests for relief in the nature of reconsideration, rehearing and/or rescission or amendment, must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, addressing petitions for relief following the issuance of a final decision. 52 Pa. Code § 5.572.

The standards for review and consideration of petitions seeking reconsideration, rehearing and clarification are well settled and are governed by the factors extensively discussed by the Commission in the case of *Duick v. Pa. Gas and Water Company*, 56 Pa. P.U.C. 553 (1982) (*Duick*); *see, also AT&T Comm. of Pa. v. Pa. PUC*, 568 A.2d 1362 (Pa. Cmwlth. 1990). In *Duick* the Commission reasoned that, while a petition under Section 703(g) of the Code may raise any matter designed to convince the Commission that it should exercise its discretion to amend or rescind a prior order, at the same time ***“[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.”*** *Duick* at 559 (quoting *Pa. Railroad Co. v. Pa. PSC*, 179 A. 850, 854 (Pa. Super. Ct. 1935)). ***Under the standards of Duick, such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by the Commission. Duick at 559.***

PGW's Petition for Reconsideration filed on April 12, 2019 *does not raise any new arguments* that have not been previously considered by the Commission in their prior orders. PGW is using the legal process as means to continue to abuse SBG patrons and all other gas customers similarly situated in the City of Philadelphia who have no choice but to use PGW for their gas services. PGW is stalling for time and it is in the public interest for the Commission's previously entered Orders be implemented post-haste. For the reasons outlined below, PGW's Petition for Reconsideration should be denied.

Background of the Action

SBG complainants have been seeking answers about their irregular gas account billings from PGW for nearly 19 years. In 2012, SBG was forced to file numerous billing and service formal complaints with the PUC to force PGW to produce and answer to SBG about PGW accounting, billings and collections practices. The PUC has entered numerous orders in favor of the SBG litigants.

After over six (6) years of litigation on September 24, 2018, PGW filed an appeal to the Commonwealth court challenging the Pennsylvania Public Utility Commission's Final Orders issued on December 8, 2016, May 18, 2018, August 23, 2018, September 20, 2018, October 4, 2018 respectively, all of which denied PGW's Exceptions and multiple requests for Reconsideration and Rehearing. The Commission has repeatedly ordered that PGW cease and desist its previously undiscovered and unknown embedded accounting methodology of applying partial payments to first extinguish all cumulative late fees and service charges before applying payments to prior balances (inclusive of previously assessed late fees and interest charges) which is in contravention to the public utility

regulations codified at 52 Pa. Code § 56.22 and §56.24¹ and the rules codified in the Pennsylvania Public Utility Code, 66 P.S. §§ 101 *et seq.*

In addition, PGW continues to charge and accrue interest charges in excess of 18% interest to past due balances which have been filed as docketed perfected judgment liens with Philadelphia Court of Common Pleas, thus maintaining two claims on the same amount due for unpaid gas charges. Pursuant to 52 Pa. Code § 56.22², PGW is limited to collecting 18% simple interest on unpaid balances. However, post-judgment interest is limited to 6% or ½% per month pursuant to statute (42 Pa.C.S. §8101) and the ruling found in caselaw, *Equitable Gas Co. v. Wade*, 812 A.2d 715 (Pa. Super. 2002). Moreover, six (6%) percent interest per annum is the amount of post-judgment interest the City of Philadelphia's municipally owned Water Department charges on overdue balances which are the subject of municipal claims.

The cases before the Commission were litigated as cases of first impression before the Commission and illustrated the deleterious effects PGW's illegal accounting practices have on customer gas accounts. SBG brought this case of first impression to the Commission's attention for review. After

¹§ 52 Pa. Code § 56.24. Application of partial payments among several bills for public utility service. In the absence of written instructions, a disputed bill or a payment agreement, payments received by a public utility which are insufficient to pay a balance due both for prior service and for service billed during the current billing period shall first be applied to the balance due for prior service.

² § 56.22. **Accrual of late payment charges.**

(a) Every public utility subject to this chapter is prohibited from levying or assessing a late charge or penalty on any overdue public utility bill, as defined in § 56.21 (relating to payment), in an amount which exceeds 1.5% interest per month on the overdue balance of the bill. These charges are to be calculated on the overdue portions of the bill only. The interest rate, when annualized, may not exceed 18% simple interest per annum. . . 42 Pa.C.S. § 8101 (relating to interest on judgments) limits postjudgment interest to 6% per year unless otherwise provided by another statute, it supersedes the regulation that provides for 18% interest per year on amounts owed to a public utility. *Equitable Gas Co. v. Wade*, 812 A.2d 715 (Pa. Super. 2002).

three years of intense comprehensive litigation, numerous hearings, the Commission found that PGW had duplicitously deceived its ratepayers, the Commission, SBG Complainants and reiterated its conclusions that PGW's billing and collections practices violated the Public Utility Code and per its Orders issued on December 8, 2016, May 18, 2018, August 23, 2018, September 20, 2018 and October 4, 2018. The Commission ordered PGW to cease and desist its practices, revamp its billing and collections system to comply with the public utility code and to refund overpayments made to PGW by SBG complainants.

SBG filed its formal complaints to the PUC in spring 2012 and has engaged in vigorous litigation with PGW for over six (6) years now. At the very least, PGW has been on notice since the Commission issued its Final Order and Opinion on December 8, 2016 that its payment and collections practices violated the Public Utility Code. Despite this notice and the Commission's indulgence granting PGW numerous extensions of time to consider multiple requests for re-hearing and reconsideration to implement Commission ordered changes to PGW's billing and collections system, PGW has refused to comply with the Commission's orders and has neither corrected its illegal practices and nor refunded any monies to SBG as ordered. Instead, PGW has taken every opportunity to delay and stall on implementing the Commission's directives and continues its illegal billing and collections practices causing SBG's complainants (and all PGW ratepayers) to suffer continued harm and injury. Moreover, PGW collected \$96,000 from the SBG/Colonial complainant at a real estate closing where those funds were under Order by the Commission to be refunded to SBG.

On September 25, 2018, PGW filed its Petition for Review of the Commission's collective orders dated December 8, 2016, May 18, 2018, August 23, 2018, September 20, 2018, and subsequently, the Commission's order entered on October 4, 2018, requesting appellate review of the Commission's

decisions³. The Commission ordered PGW to serve counsel for SBG with its Petition for Review or this Petition for Stay Pending Review which PGW counsel served upon SBG counsel on September 28, 2018.

On April 12, 2019, PGW filed its *fifth (5th)* Petition for Reconsideration which is in essence a Petition to Stay Implementing the Commission's Orders, challenging the Commission's order entered on March 28, 2019 denying PGW's petition for stay whereby PGW seeks to "preserve the *status quo*, i.e., to stay any compliance, application or enforcement of Orders pending the ultimate disposition." As it states in its petition, PGW does not want to be "forced to bear the substantial time and effort and expense of complying with the PUC".

PGW is the only municipally owned gas company in the state. PGW is the only gas company that has a unique position under the Municipal Claims and Tax Lien Law ("MCTLL"), Act 153 of 1923, P.L. 207, 53 P.S. §§ 7101, *et seq.*, whereby PGW can use its automatic lien system to docket and perfect as liens claims with the City of Philadelphia for outstanding gas debt attaching such *claims as a legal judgment* on the property without notice to the property owner. Notwithstanding PGW's special position as a municipal gas entity with an ability to push a button in its office to automatically docket a lien judgment with the common pleas courts in the city of Philadelphia, unlike its private utility competitors such as PECO who must file complaints to obtain judgments for unpaid utility debts through the courts. Nevertheless, PGW is still subject to the authority of the PUC Commission, its rules and regulations codified at 52 Pa.Code §§ 56.1 *et seq.* and the statutory laws found under title 66 P.S. §§ 101 *et seq.* of the Pennsylvania Public Utility Code.

³ PGW has filed appeals of the Commission's orders and cases are pending before the Commonwealth court at *Philadelphia Gas Works v. Pennsylvania Public Utility Commission*, 1291 C.D. 2018, 1404 C.D. 2018, and 1405 C.D. 2018

The Commission evaluated the evidence presented and found that PGW flagrantly disregarded the Commission's rules, regulations and the Public Utility Code warranting imposition of civil penalties and refunds ordered to the SBG Complainants. The Commission's orders held PGW's feet to the fire and ordered PGW to comply with the *existing* rules, regulations and laws pertaining to billing and collections practices for public utilities in the state. The law as applied by the Commission is not new; what is new is that as a result of this litigation PGW's illegal practices were discovered by the public, the Commission and the SBG complainants. In this filing, PGW admits that its billing systems and practices have been in place since before July 1, 2000, as noted on page 3 of PGW's Petition for Stay and is further evident in the record by the testimony of PGW's witness, Diane Rizzo.

The regulations at 52 Pa. Code §§ 56.22 and 56.24 regarding late fees and the application of partial payments posted to public utility accounts have been in existence since 1978. PGW has been obfuscating and circumventing PUC regulations regarding application of payments since it has been under the purview of the Commission's authority, never disclosing its illegal practices to the Commission, SBG Complainants and or its ratepayers until it was forced to do so during the course of the SBG litigation. Despite the clear unambiguous language of the regulations, PGW has ignored the statutory construct and has illegally and wrongfully collected sums outside its approved tariffs for decades.

Now that they have been caught, they are fighting tooth and nail not to be held accountable to their gas patrons who are also taxpayers in the City of Philadelphia. PGW's wrongful practices were first disclosed through SBG's illustrations presented to the Commission in 2015 and PGW has evaded the PUC's directives to implement lawful billing and collections systems that conform to the Commission's rules and regulations since being ordered by ALJ Eranda Vero in September 2015.

It is SBG Complainants' belief that PGW's plan is to use the Commission's procedural rules and regulations at 66 Pa.S.C § 703 and 52 Pa.Code §5.572 and the appellate review process as a means to circumvent compliance under the code for an additional six (6) years or more, unreasonably delaying justice for the SBG complainants and all other PGW ratepayers. For the reasons outlined below, PGW's Petition for Stay Pending Review should be denied.

II. ARGUMENT

PGW Continues to Violate its *RESTRUCTURING ORDER DATED JUNE 30, 2003, M-00021612*. PGW's long-standing bad faith indifference to conforming to the Commission's Rules for 19 years does not warrant the Commission granting a Stay of their Orders pending appellate review.

In *Pa. P.U.C. v. Philadelphia Gas Works*, Docket No. M- 00021612⁴, Philadelphia Gas Works (PGW) filed its Restructuring Plan pursuant to Section 2212(h) of the Natural Gas Choice and Competition Act (Gas Choice Act). The Gas Choice Act provides for the restructuring of Natural Gas Distribution Company (NGDC) services so as to give Pennsylvania's natural gas customers choice in the provider of their natural gas supply services. Pursuant to the Gas Choice Act, the PUC was required to review the restructuring plans filed by all Pennsylvania NGDCs and hold open evidentiary hearings before entering an order that accepts, modifies or rejects each of the proposed plans.

Through this Restructuring Proceeding, ***PGW was required to convert its existing information technology, accounting, billing, collection, gas purchasing and other operating systems and procedures to comply with the requirements of the Public Utility Code and Commission Rules and***

4

www.puc.state.pa.us/PcDocs/489275.doc

Regulations. On March 21, 2003, the Commission adopted an Order with respect to tariff issues and Chapter 56 compliance, the Commission agreed with the Office of Consumer Advocate's position that PGW's *proposed tariff* was not compliant with Chapter 56 and the requirements of the Act. The Commission stated that any tariff provisions that were not compliant with Chapter 56 on September 30, 2003 are void.

At the June 30, 2003 Public Meeting the Commission entered its *PA PUC v. PGW Restructuring Order*, June 30, 2003, M-00021612, finding "[t]o the extent that our Restructuring Order required clarification regarding the application of Chapter 56 of our regulations to PGW's customer protection provisions of its tariffs, **we have set forth that PGW will be required to comply with Chapter 56 as well as the provisions of the Act which require that the level of quality of those protections must not diminish from their levels as of the effective date of the Act.** *Id.* at 10. The Commission reinforced its unwavering directive that PGW is subject to promulgated rules under Ch 56 of the Code, which includes the 1978 promulgated rules at 52 Pa.Code §56.22 and §56.24. The Order further directed "[o]n the effective date of this Opinion and Order, Chapter 56 will be in effect and any PGW tariff provision that does not meet the standards of Chapter 56 is void. The compliance filing resulting from this Opinion and Order is the appropriate time for PGW to revise its tariffs to conform to Chapter 56." (*Id.* at 39).

The Commission stated in its Order entered on June 2, 2004 in the matter entitled *Investigation into Financial and Collections Issues Regarding the Philadelphia Gas Works*, Docket Nos. P-00042090, R-00049157, M-00021612, P-00032061 and P-00042117, if PGW files a petition within thirty (30) days of entry of this Order seeking waiver of regulations, the Commission will consolidate that petition with this investigation. The Commission reasoned that "[i]n the event PGW files a waiver petition, it should propose the duration of the waiver, as well as an alternative standard or procedure that would apply in

place of those contained in the regulations. **It would be PGW’s responsibility to explain in such a petition how the alternative standard or procedure adequately balances consumer protection rights with PGW’s financial integrity. See 52 Pa. Code §§5.43 and 56.222.” (emphasis added).** Moreover, the Commission stated that “[i]f PGW does not file such a petition, the Commission will conclude that our regulations do not impede PGW’s collection efforts.” *Id.* at 4.

The City/PGW did file appeals of the PUC restructuring Order to this Court. Dan Clearfield, Esq. argued on behalf of the City/PGW in the appellate review of the consolidated appeals. In City of Philadelphia v. PA. PUC, 829 A.2d 1241 (Pa. Commw. Ct. 2003), the court reviewed City/PGW’s consolidated appeals from the restructuring orders of the Pennsylvania Public Utility Commission (PUC), considering whether under the Natural Gas Choice and Competition Act (Gas Choice Act) the PUC can increase Philadelphia Gas Works’ (PGW) municipal service rates without approval from Philadelphia City Council. The Court affirmed the PA PUC, holding that City Council approval is not necessary. The court reasoned that “when 66 Pa.C.S. Section 2212(e) is read in its entirety, it is clear that "requirements" refers to "revenue requirement[s]." In the above quoted portion of Section 2212(e), the phrase "revenue requirement" is used twice, once before and once after the mandate to "follow the same ratemaking methodology and requirements." *Id.* at 1245. This court reasoned “[t]here is nothing in the language of Section 2212(e) of the Gas Choice Act that suggests legislative intent to burden ratemaking with non-financial considerations. Indeed, the contrary is true. Moreover, there is no reference to ratemaking among the powers preserved for cities owning gas distribution operations. 66 Pa.C.S. § 2212(s). ***These omissions are consistent with our conclusion that the Gas Choice Act reposes the ratemaking function solely in the PUC, subject to the condition to follow existing ratemaking methodology and revenue requirements, but not subject to approval by City Council.***” (emphasis added). *Ibid.*

On June 16, 2004, PGW filed a “Petition for Limited Waiver or Modification of PUC Chapter 56 Rules and Administrative Interpretations.” PGW sought relief from complying with the Code and the Act in its “Petition for Limited Waiver or Modification of Chapter 56 Rules and Administrative Interpretations to the PUC for Concurrent Disposition with Petition for a Cash Receipts Reconciliation Clause.” On June 25, 2004, PGW filed three errata sheets clarifying and/or amending its waiver petition. *PGW did not specifically seek a waiver of the Commission’s long-established customer service protection rules found at §56.22 and §56.24.*

In the Commission Order entered on August 10, 2004, ALJ Charles Rainey found that “PGW has presented confusing and contradictory evidence in regard to tariff section 2.4.C.6. On the one hand, PGW stated that it has had success with its lien and judgment program without pursuing execution, in that it has collected payments at the time that title to property is about to change or when a customer wants to clear a judgment from his or her credit. As a matter-of-fact, PGW stated that it collected over \$8 million in fiscal year 2004 through its lien program. PGW St. CP-1 at 8-10. Yet, PGW also opined that without tariff section 2.4.C.6. it will be forced to execute upon the liens and judgments. PGW has not shown why it would not continue to have success collecting on liens and judgments without executing on them, without tariff section 2.4.C.6.” *Id.* at 40.

In its Order initiating the ‘Investigation’, the Commission directed the fact finder to examine PGW’s collection process. “The Commission stated as follows in regard to why it was including PGW’s collection process in this proceeding:

Some of the witnesses who testified against PGW’s proposed CRRC argued that PGW’s collection process was flawed; this supports placing PGW’s collections efforts – and steps that may be necessary to improve it – at issue in this investigation. Therefore, the proceeding should be expanded to investigate the adequacy, cost effectiveness and management of PGW’s collection practices.

Investigation into Financial and Collections Issues Regarding the Philadelphia Gas Works, P-00042090, R-00049157, M-00021612, P-00032061 (Initiating Investigation Order entered June 2, 2004) at 4⁵. ALJ Rainey, “[noted] that Section 2212(h)(1) of the Public Utility Code indicates that PGW in the Restructuring Proceeding had an opportunity to petition the Commission to modify any Commission regulations that PGW believed to be imprudent on the basis of a cost-benefit analysis. PGW did not file a waiver petition in the Restructuring Proceeding. The Commission noted as much in its July 8, 2004 Order in this Investigation. *See also* Investigation (Order entered July 8, 2004) at 5, footnote 4.” *Id.* at 56.

ALJ Rainey denied PGW’s petition for waiver of Ch. 56 consumer protections because PGW did not present any alternative standard or procedure that could adequately balance consumer protection rights with PGW’s financial integrity. *See Recommended Order Dated August 10, 2004.* Section 2212(d) of the Act provides that PGW’s “prior tariff” shall apply in the period between assumption of PUC jurisdiction over PGW’s Tariff and the effective date of PGW’s restructuring plan. *See Investigation into Financial and Collections Issues Regarding the Philadelphia Gas Works, P-00042090, R-00049157, M-00021612, P-00032061.*

Since coming under the purview of the Commission, it is evident that PGW has never accepted nor complied with the rules and regulations promulgated at §56.22 and §56.24 related to consumer protections and accounting integrity. The Commission and the Office of Consumer Advocate raised these questions prior to PGW’s submitting to the jurisdiction of the PUC. The *Restructuring Order dated June 30, 2003, PA PUC v. PGW, M-00021612* is attached hereto as Exhibit A. The Commission stated emphatically in its conclusion, “[t]o the extent that our Restructuring Order required clarification regarding the application of Chapter 56 of our regulations to PGW’s customer protection provisions of

⁵ <http://www.puc.state.pa.us/PcDocs/489275.doc>

its tariffs, *we have set forth that PGW will be required to comply with Chapter 56 as well as the provisions of the Act* which require that the level of quality of those protections must not diminish from their levels as of the effective date of the Act (66 Pa.C.S. §2201 et seq.). More specifically the Commission found that Section 2206(a) of the Act provides in pertinent part:

Customer service and consumer protections and policies for retail gas customers shall, at a minimum, be maintained at the same level of quality under retail competition as in existence on the effective date of this chapter. 66 Pa. C.S. § 2206(a).

ALJ Rainey noted OCA's observation that Section 2203(3) also mandates that the standards for consumer protections must be maintained "*at the levels consistent with this chapter.*" 66 Pa. C.S. § 2203(3). *Id.* at 4-7.

Moreover, by the time this court intervened and affirmed the PUC's authority in City of Philadelphia v. PA. PUC, 829 A.2d at 1245, 1246 by concluding "we are not required to depart from our construction of the Gas Choice Act to accommodate concerns for local self-government raised by one class of gas customer." *Id.* at 1246. In other words, since 2000, PGW has always complained about its inability to function financially without the ability to use the MCTLL to lien gas debt, and continue to charge tariff interest rates (18% per annum) on debts that are liened and rightfully subjected to 6% per annum post judgment interest, which is a means to boost revenues by doubling the allowable interest rate to post-judgment gas liens. Furthermore, PGW in all of its exceptions, appeals, briefs, petitions, etc. never defends its accounting practice that flagrantly defies the Commission's rules at §56.24 when applying partial payments to prior balances. There is no justification other than unadulterated greed and fiscal mismanagement to re-order customer payments posted out of time. No other gas company in the state posts payments in this manner. The City and PGW elected to engage in private commerce to supply gas to its taxpayers and citizens. There is no real gas competition in the City, so in essence PGW

is a monopoly that abuses its gas patrons and refuses to conform their accounting, billings and collections systems in accordance with the Public Utility Code and the Commission's regulations.

In PGW's 2017 Annual Report⁶ and its 2018 Annual Report⁷ the company synthesizes the SBG et al. litigation to the City's municipal bond holders. The PGW financial report is designed to provide the citizens of Philadelphia, customers, investors, and creditors with a general overview of PGW's finances and to demonstrate PGW's accountability for the money it receives. What is very curious is that PGW has the audacity to actually admit that they are intentionally using the PUC Petitions to Stay Implementing the Courts orders. In their Audited Annual Bond Reports, PGW admits that its accounting, billings and collections practices do not conform to the Commissions Rules at §56.22 and §56.24. *See City of Philadelphia Supplement dated August 16, 2017 to Official Statement dated August 9, 2017 relating to \$273,140,000 CITY OF PHILADELPHIA, PENNSYLVANIA GAS WORKS REVENUE BONDS FIFTEENTH SERIES (1998 GENERAL ORDINANCE) found at <https://www.phila.gov/investor/PDF/Philadelphia%20Gas%20Works%20Revenue%20Bonds,%20Fifteen%20Series.pdf>.*

In PGW's 2017 and 2018 Supplemental and Audited Financial Reports, PGW presents a summary of the SBG litigation stating "[o]n December 23, 2016, PGW petitioned the PUC for Reconsideration and Rehearing of this matter including a request to stay the implementation of the

6 https://www.pgworks.com/uploads/pdfs/2017_Audited_Financial_Report.pdf,

https://www.pgworks.com/uploads/pdfs/Comprehensive_Annual_Financial_Report.pdf

7. https://www.pgworks.com/uploads/pdfs/FY_18_Audited_Financial_Report.pdf

Order and Opinion, *thus preserving the ability to appeal the matter to the Commonwealth Court. On December 28, 2016, the PUC granted PGW's petition, which operates as a stay, pending review on the merits. PGW is awaiting the PUC's determination on the petition.*

https://www.pgworks.com/uploads/pdfs/2017_Audited_Financial_Report.pdf.

The Commission opined in its June 30, 2003 *Restructuring Order*, “the issue before us, we agree with PGW that it is the level of quality of services and protections that must be maintained per the Act. *The Act does not require every specific pre-Act practice to remain in force, so long as the level of quality of services and consumer protections are not reduced.* We also agree with the OCA that gas distribution companies may, but are not required to, provide protections and services that exceed Chapter 56 requirements. As we stated in the *Restructuring Order*, we expect PGW to comply with the Act and Chapter 56 in its compliance filing. To the extent that any party that believes PGW's compliance filing does not satisfy that directive, it may address specific tariff provisions in the context of that filing.” *See Restructuring Order Dated June 30, 2003 at pg. 7.*

PGW's disingenuous arguments that the PUC is illegally creating a new financial scheme that is beyond the PUC's purview is based upon their belief of their own twisted propaganda and erroneously wrong-headed reading of the law. PGW's has been making the same argument to the Commission since June 2000 that somehow PGW is immune to and not required to follow the same rules as other public utilities. PGW's 'special status' to impose liens under 66 Pa.C.S. §2212(n), allows PGW to docket gas liens from their office. It's a statutory convenience for the company that no other commercial gas company in the state is afforded. However, nowhere in the Act or the Public Utility Code is PGW authorized to bypass Commission rules and regulations at §56.22 and §56.24 as a means to boost revenues and collections outside of their authorized tariff. On June 30, 2003, the Commission's

Restructuring Order made it crystal clear that PGW is subject to Ch. 56 consumer protections pursuant to the Code.

In *PENNSYLVANIA, ETC. v. Pennsylvania Gas*, 424 A.2d 1213, 492 Pa. 326

(Pa. 1980) the court found that “[t]he PUC is statutorily and constitutionally obliged to set "just and reasonable" rates and may, but is not required to, use cost of reproduction in the rate base. See *Keystone Water Co. v. Pennsylvania Public Utility Commission*, 477 Pa. 594, 615-26, 385 A.2d 946, 957-63 (1978). The Supreme Court over-ruled the Commonwealth Court and reinstated the PUC order finding that, [the] “Commission can and, where equities require, does permit the utility to recover from the ratepayers, as a proper and necessary expense of rendering the public service, the necessary amount to make the utility whole. On the other hand, where, as here, the utility recovers an amount or sum as a result of compensation for particular property and the potential consequential injury to the service of the ratepayers for whom that property was dedicated to the public use, the Commission, where the equities dictate, may require that amount received by the utility to be treated, for public utility accounting and rate making purposes, in such manner as will place the utility and the ratepayers in the same position, insofar as reasonably possible, as they were before the extraordinary event or transaction which gave rise to the sum or amount in question. *Id.* at 333. Justice Larsen concurred with the majority and stated **“Additionally, I would add that under no circumstances can a "windfall" or gift to a utility be included in a rate base.”** *Id.* at 333, 343.

Given the fact it has been nineteen (19) years since PGW submitted to the Commission’s jurisdiction, rules and regulations. PGW was ordered to revamp its billings and collections system to conform to Ch. 56 consumer protections, including but not limited to §56.22 and §56.24. PGW intentionally ignored the Commission’s directives and since that time has strenuously argued and resisted following the Commission’s multiple Orders. PGW offers no justification for defying the

Commission. PGW routinely complains that it cannot compete in the private market place and results to cheating gas customers who are ultimately City taxpayers to prop up their coffers. Who knows where the money goes? Perhaps PGW has been severely mismanaged since prior to June 2000, and by all evidence has not improved its fiscal management since then. In the company's Annual Reports and Bond reports cited above, the company admits that PGW's billing and collections system and embedded internal operations do not conform to the Commission's rules and PGW also admits that if it loses this ability to double dip, charge 2 times the legal interest rate for sums filed as liens (18% rather than 6% simple interest per annum, and to continue to re-order customer payments to extinguish non-interest bearing debt before applying payments to customer balances as §56.22 and §56.24 dictate, PGW cannot fathom the loss of the revenues generated by their illegal scheme.

The issue before the Commission is not new, is not novel and does not raise any issues not previously fully considered and disposed of by ALJ Vero in the consolidated proceedings below. PGW and the City of Philadelphia have breached the public trust. As a municipally owned gas company PGW, moreover, the City as its owner is subject to the Public Trust Doctrine.

Douglas Quirke is the author of *The Public Trust Doctrine: A Primer*, A White Paper written in February 2016 University of Oregon School of Law Environmental and Natural Resources Law Center; His white paper discusses government's duties under the Public Trust Doctrine. The Public Trust Doctrine is not a new legal concept; it can be traced back to Roman law. The Public Trust Doctrine takes an existing legal framework, and applies it to the management of natural resources to ensure that those resources are managed sustainably. Just as in private trust law, the public trust framework involves trustees and beneficiaries. In the public trust context, government is the trustee, while present and future generations are the beneficiaries. If the legislative and executive branches fail to carry out their trust duties, the beneficiaries can call upon the courts to compel the other branches of government to fulfill

their fiduciary obligations. Government's public trust obligations apply to natural resources that have an inherently public character and are not owned in the same ways as traditional property. Fundamentally, the Public Trust Doctrine requires the government to manage public trust resources in a sustainable manner, pursuant to the basic standards of competence in asset management that trust law imposes on a trustee. The Public Utility Code and the Commission's authoritative regulations provide a roadmap for a paradigm of sustainability based on existing law. Very few other policy proposals provide realistic means for achieving sustainability with a solid legal backing. The Public Trust Doctrine provides the basic framework for the sustainable management of natural resources based on an existing framework of trusteeship with specific duties that are all aimed at sustainable management of the trust resources. The City of Philadelphia as owner of PGW is subject to the Public Trust Doctrine which imposes an active duty of protection to the taxpayers and gas patrons. Government may not simply allow the trust property to deteriorate. Rather, it must confront and control ongoing environmental harm for issues such as climate change and ocean acidification.

Just as in the private trust context, in the public trust context trustees must adhere to both substantive and procedural duties. The five substantive duties are: 1) the duty of protection; 2) the duty against waste; 3) the duty to maximize the societal value of natural resources; 4) the duty to restore trust resources when damaged; and 5) the duty against privatizing trust resources. The five procedural duties are: 1) the duty of loyalty; 2) the duty to adequately supervise agents; 3) the duty of good faith and reasonable skill 4) the duty of precaution; and 5) the duty of accounting.

Government must adhere to the duty of loyalty by preventing private economic interests and politics from influencing natural resource management. Trust resources must be used according to their highest public purpose, because they are limited. Trustees may not allocate public resources primarily to serve private purposes – i.e. using public resources as a free repository for pollution. Government has a

duty to restore damaged natural resources. The duty demands recovery of natural resource damages (NRDs), and the use of funds recovered to restore the functions and values of lost ecological services and natural resource values when a third party substantially impairs trust resources.⁸

Where government clearly takes advantage of public resources and subverts fiscal transparency and engages in a scheme to fleece its stakeholders, deceive regulators, the courts, and conceal necessary information from patrons, the regulators must take swift action to protect the health, safety and welfare of the public from corruption and ill-gotten gains resulting from the public utility circumventing long-standing regulations and law. In August 2004, ALJ Rainey conducted an investigation into PGW's billing and collections practices and ordered the company to conform to the Commission's regulations under Ch. 56 (inclusive of §56.22 and §56.24). When ALJ Rainey rendered his decision, the Commission had reconciled and clarified §56.22 by adopting the rulings under Aronson v. Pennsylvania Public Utility Commission, 740 A.2d 1208 (Pa.Comwlth. 1999); appeal denied 751 A.2d 193 (Pa. 2000) and Equitable Gas v. Wade, 812 A.2d 715 (Pa. Super. 2002). The fact that PGW has illicitly embedded its non-conforming billing and collections scheme and thwarted SBG's efforts for years and continues to frustrate accounting compliance, perhaps the Commission should consider referring PGW's managers to other authoritative agencies pursuant to referrals to 66 Pa.C.S. 2209(g).

8 Douglas Quirke, University of Oregon School of Law ENR Research Associate, *The Public Trust Doctrine: A Primer*, A White Paper, February 2016 University of Oregon School of Law Environmental and Natural Resources Law Center;

https://law.uoregon.edu/images/uploads/entries/PTD_primer_7-27-15_EK_revision.pdf

PGW is subject to the jurisdiction of this Commission based on PGW's classification as a "city natural gas distribution operation." *See May 18 Order* at 5, citing 66 Pa. C.S. § 2212(b). As a city natural gas distribution operation, the only utility having this classification in the Commonwealth, PGW is expressly entitled under the Code to avail itself of statutory rights pertaining to the collection of delinquent receivables, through the imposition of municipal liens. *Id.*, citing 66 Pa. C.S. § 2212(n).

PGW, however, is not *sui generis* for purposes of prosecuting an action before the courts under the rights of a municipal corporation. PGW consists only of the real and personal assets that are used to manufacture and deliver natural gas to entities within the City of Philadelphia's borders and does not meet the legal definition of an entity authorized to file a lien to enforce a municipal claim as set forth in the statute, *infra*. Consequently, when PGW provides natural gas service to an entity within the borders of the City of Philadelphia and is not paid, it is the City of Philadelphia that has a municipal claim which it can enforce by way of a lien on the property that was provided natural gas service. *See May 18 Order* at 4-6. The City of Philadelphia, in collection of the debt for past due utility accounts, filed municipal liens on the subject properties, *i.e.*, recipients of gas utility service, represented by SBG. The filing of liens by the City of Philadelphia was according to the provisions of the Municipal Claim and Tax Lien Law, Act 153 of 1923, P.L. 207, 53 P.S. §§ 7101, *et seq.* (MCTLL), in furtherance of the recovery of the utility account balances. *Id.*

PGW has filed a Petition for Review with the appellate court. SBG reiterates PGW is using the appeals process as a delay tactic to implement corrective changes to its billings and collections system which comply with the Commission's regulations because PGW admittedly relies on the extra fees as a means to inflate its approved tariff rate.

Legal Standard

Agreed and admitted. PGW properly states the elements of the legal standard PGW must set forth to be granted a stay of the proceedings pending review by the Commonwealth court.

Request for Stay Pending Appeal

PGW admits their 'illegal' billing and collections "systems and practices have been in place since before July 1, 2000 when PGW came under the jurisdiction of the PUC". PGW has maintained its illegal and unlawful payment posting and collections practices for decades and continues this practice as of this writing. Throughout the ten years SBG inquired about PGW's underlying accounting practices from the early 2000s until spring 2012 when SBG filed its eight (8) formal complaints against PGW with the PUC, PGW's violative practices were undiscoverable by both ratepayers, SBG complainants and the Commission until PGW was forced to disclose its underlying payment posting methods through discovery. In the Petition to Stay, PGW argues that there is no immediate need to change its illegal practices in violation of its tariff. PGW argues "that is far more practical and in the public interest to wait until a final decision is handed down by the courts before it is forced to expend time and money modifying its billing systems."

PGW fails to consider that its illegal practices are a clear violation of the plain, unambiguous language of the regulations (§§ 56.22, 56.24) and statutes (42 Pa.C.S § 8101) and the Public Utility Code. But for the SBG litigation, no one, not the Commission, other ratepayers (residential or commercial) nor the SBG complainants were aware of PGW's decades-long illegal accounting scheme. Moreover, on September 20, 2018, the Commission issued its Final Opinion and Order in the next set of the SBG complainants' cases, (SBG Management Services, Inc./Elrea Garden Realty Co, L.P. v. Philadelphia Gas Works, C-2012-2304167; SBG Management Services, Inc. /Fairmount Manor Realty Co., L.P. v. Philadelphia Gas Works, C-2012-2304215; SBG Management Services, Inc. /Marshall

Square Realty Co., L.P. v. Philadelphia Gas Works, C-2012-2304303)⁹ and noted in its opinion and order PGW's history of deceitful and intentionally misleading conduct that it has used against ratepayers who adjudicate complaints before the PUC, especially when litigates want to understand their billings related to gas liens.

PGW has challenged the assessment of civil penalties in these consolidated complaints. However, the Commission has painstakingly considered whether PGW's long-standing practices to ignore the Code and the regulations as mere negligence or bad faith actions, opining in its order dated September 20, 2018 that "[t]he determination of PGW to engage in the practices which have been found in violation of the Code and Commission Regulations in this Complaint were made with an express business intent and business objective of maximizing revenues derived from uncollectible accounts, in excess of what was permitted by PGW's tariff and Commission Regulations." The Commission referenced the third circuit case of *Augustin v. City of Philadelphia*, 897 F.3d 142 (3d Cir. 2018), a recent decision that involved plaintiff landlords' due process challenges to PGW's lien practice for tenant gas debt. The decision accurately depicts PGW's duplicitous conduct towards ratepayers, including the SBG complainants who challenge PGW liens. The *Augustin* court referenced how PGW treats property owners who contest liens against their property as articulated below:

Unsurprisingly, property owners regularly contact PGW to ask how they may challenge a lien. When that happens, the owner is often told to "file a complaint with the Pennsylvania Public Utility Commission ("PUC"), . . . [which] has repeatedly taken the position that it has no jurisdiction to act in matters which arise under the [Lien Law]." *Augustin v. City of Philadelphia*, 171 F. Supp. 3d 404, 414 (E.D. Pa. 2016). The record shows that the utility knew this and took advantage of it by continuing to steer customers in the PUC's direction in spite of the fact that the PUC declined jurisdiction over such complaints. Indeed, when two of the named Plaintiffs here filed complaints with the PUC, PGW

⁹ See PUC Commission's Final Opinion and Order Dated September 20, 2018, attached as Appendix A: SBG Management Services, Inc. /Elrea Garden Realty Co, L.P. v. Philadelphia Gas Works, C-2012-2304167; SBG Management Services, Inc. / Fairmount Manor Realty Co., L.P. v. Philadelphia Gas Works, C-2012-2304215; SBG Management Services, Inc. / Marshall Square Realty Co., L.P. v. Philadelphia Gas Works, C-2012-2304303

immediately turned around and successfully challenged the agency's jurisdiction. (Emphasis supplied). See 2018 U.S. App. LEXIS 19811 at *7-*8.

The Commission noted PGW's conduct to circumvent the PUC's jurisdictional review as outlined in the *Augustin* decision coupled with PGW's practice to conceal its billing and collection practices from the SBG complainants, the public and the Commission constitutes bad faith, "find[ing] the above-cited statements from the Third Circuit to evince duplicitous conduct on the part of PGW. This is "bad faith" under our Regulations and weighs in support of a higher level of penalty against PGW."

PGW has cheated ratepayers for decades. PGW has duped the Commission since July 2000 receiving authorized increases in its tariff rates while concealing its accounting and collection scheme to boost collection revenues beyond the authorized tariff. The SBG litigation has been ongoing for over six (6) years and is likely to continue for another six (6) years as the cases make their way through the appellate courts. Consequently, not only will the SBG complainants continue to be injured, all other PGW patrons will continue to suffer harm if the PUC and/or Commonwealth court stay PGW's duty to comply with the Public Utility Code, the Commission's rules, regulations and state law as it is written.

PGW's likely success on the merits.

PGW's practice to "reorder" past due, partial payments directly violates the plain language of the Commission's regulations, specifically those regulations at 52 Pa. Code § 56.22(a); 52 Pa. Code § 56.23; and 52 Pa. Code § 56.24. 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. In addition, PGW's long-standing practice of charging 18% interest on sums set to lien judgment violates Section 1303 of the Public Utility Code

(Code), 66 Pa. C.S. §1303, to the extent the rates applied to late payments exceed the permissible, “Commission-made,” rates in PGW’s tariff. *See December 8 Order* at 71; *SBG I.D.* at 54-55; Tr. 206-207. The ruling in *Equitable Gas Co. v. Wade*, 812 A.2d 715 (Pa. Super. 2002) holds that post-judgment interest is limited to 6% per annum under 42 Pa.C.S. §8101 where the statute control over regulations as noted in § 56.22 regarding late fees.

The record of this proceeding proves PGW was less than forthcoming on disclosing the actual mechanics of its collection practices regarding the application of interest and late payment charges for its accounts with Colonial Garden and Simon Garden. Only after several years of litigation and multiple motions to compel, PGW finally divulged its accounting methodology revealing PGW employed a “hierarchy” of application of partial payments on past due amounts and/or amounts that were simultaneously the subject of municipal liens. *See December 8 Order* at 19. PGW has misappropriated the regulations for as long as it has been under the purview and authority of the PUC. PGW has deliberately misled the Commission, SBG complainants, its gas customers and the public by illegally collecting monies from its patrons beyond its approved tariff.

PGW has cited *PUC v. Process Gas Consumers Group*, 467A.2d 805 (Pa. 1983), for the proposition that criterion to determine whether the Commission’s order should be stayed pending review, there is a requirement to balance all the interests of the parties including the public interest. In balancing the interests to determine whether a stay should be granted, SBG urges the Commission to consider the following: 1) The Commission’s regulations regarding application of partial payments has existed in the PUC regulations since 1978. *See* 52 Pa. Code §56.24¹⁰. 2) PGW admits that it has

¹⁰ **§ 56.24. Application of partial payments among several bills for public utility service.** In the absence of written instructions, a disputed bill or a payment agreement, payments received by a public utility which are insufficient to pay a balance due both for prior service and for service billed during the current billing period shall first be applied to the balance due for prior service. **Source: The provisions of this § 56.24 adopted June 16, 1978, effective June 17, 1978, 8 Pa.B. 1655.**

maintained its accounting systems and practices since prior to coming under the jurisdiction of the PUC in July 2000. 3) PGW refused to disclose its accounting methods to SBG complainants for over ten years, and induced SBG complainants to sleep on its rights and delay prosecution before the PUC. 4) PGW had to be compelled to disclose its accounting methods to the SBG complainants, and ultimately the Commission. 5) SBG complainants filed their actions against PGW in 2012, after over six (6) years of litigation, and three (3) final orders and opinions issued by the Commission, PGW has not taken any corrective action to comply with the regulations regarding its billing and collections system and practices, nor has it issued refunds to the SBG complainants. 6) PGW continues its illegal billing and collections practices with impunity and arrogance as of this writing. 7) PGW is using the appellate review process to forestall and delay taking corrective action to its billings and collections systems for as long as it can, delaying justice for SBG complainants and PGW ratepayers for years to come until all appeals are exhausted, in all likelihood another six (6) years.

In balancing the interests, the Commission must also consider that PGW has *always defied the regulations and rules of the PUC*. SBG Complainants have had to vigorously litigate their claims for over six (6) years and continue to do so. Moreover, other residential and commercial gas customers have likely suffered great injury and over-collection of monies by PGW and continue to be harmed as a result of PGW's continuing illegal actions.

The Commission has the authority to invoke and order PGW to comply with the Commission's rules and regulations. The language contained in §56.24 regarding the application of partial payments is clear and unambiguous. PGW admits that it does not apply partial payments to customer accounts in the manner prescribed. In addition, PGW's practice of maintaining tariff interest charges (pre-judgment

interest 18% per annum) to post-judgment liened debt is in contravention to the regulations codified at §56.22(a), the statute at 42 Pa.C.S. §8101, and the ruling in *Equitable Gas Co. v. Wade*, 812 A.2d 715 (Pa. Super. 2002), a case that PGW has ignored since its entry in 2002.

PGW will not suffer irreparable injury without a stay. The SBG complainants, PGW patrons and the public will continue to suffer irreparable injury with a stay for several years as PGW appeals proceed through the courts.

PGW's billing and collections practices have violated the Public Utility Code and the Commission's regulations for decades. They admit that they rely upon the collections they receive from the municipal liens for their fiscal stability. PGW does not offer any consolation to the SBG complainants who have over-paid or suffered economic injury as a result of PGW over-collecting monies from them and others similarly situated.

At its January 18, 2018 public meeting, the Commission opined "upon consideration of the representations of PGW, we conclude that PGW has failed to submit compelling evidence supporting a compliance period of fifty-seven weeks. PGW has been on notice of 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 PGW a lengthy compliance period. Therefore, we find that a ninety-day compliance period is sufficient for the necessary billing modifications and shall so order."

This sentiment was reiterated by the Commission in its May 18, 2018 opinion and final order. Using dubious legal maneuvers to delay the process by filing multiple requests for rehearing/reconsideration, PGW has been afforded additional time to comply with the Commission's order dated August 23, 2018. PGW has had nearly three years to conduct the necessary research, acquire financing to implement system-wide changes to its billing and collections system and train staff on a compliant billing and lien system.

PGW does not lose any protections afforded under the MCTLL or chapter 14 of the Public Utility Code, 66 P.S. §1414, to docket liens with the court of common pleas for municipal claims by operating in compliance with the Code. To suggest otherwise is a ludicrous assertion. PGW is abusing its position as the sole municipal gas entity in the state by suggesting that its fiscal stability is grounded in its ability to maintain two claims on the same debt. PGW has not offered a legitimate reason as to how compliance with the Code and the Commission's regulations will make it insolvent.

PGW has operated in contravention to the Code and regulations for so long, it cannot fathom its own illegal actions. In essence, PGW has never complied with the PUC rules and regulations since coming under its jurisdiction, a fact which PGW admits in this filing. However, as a regulated public utility, the City has a duty to the public to deal fairly and in good faith with its ratepayers. The Commission has a duty and significant interest to protect the public and ensure that PGW complies with the Code and the regulations. Therefore, PGW's specious arguments that the Commission's orders for PGW to initiate changes to its billing and collections system that comply with the Code is somehow laborious, violates statutory provisions and causes *per se* irreparable harm is unfounded.

PGW has not initiated any corrective action to its billing and collections system since this litigation began in 2012. PGW has fought the SBG complainants since the early 2000s, refusing to divulge any meaningful information on how the company applied payments and interest to its customer accounts. After a decade of inquiry to PGW on their billing practices, in spring 2012, SBG had to file suit with the PUC to gain an understanding of how PGW applied its payments.

PGW was not honest with the Commission *in any of its prior rate cases* because PGW never disclosed its practice to reorder payments in such a way as to subject prior balances to new interest-bearing late fees and extinguished late fees and service charges first before applying payments to prior

balances, which is a deceptive method to achieve a higher tariff rate than authorized by the Commission. PGW never informed ratepayers or the Commission that it continued to charge tariff approved interest rates (18%) to debts that were docketed as lien judgments rather than 6%, the statutory interest rate approved under the regulations at §56.22 and held in *Equitable Gas v. Wade*, 812 A.2d 715 (Pa. Super. 2002).

It is disingenuous for PGW to argue that it will take at least 57 weeks to implement changes to its billing and collections system. As a city-owned public utility, PGW does not have to look any further than the City of Philadelphia's own water department to view an accounting system that operates in conformity to §56.22 and §56.24.

The Philadelphia Water Department's website offers a page that informs the patron of the hierarchy of applied payments. The water department applies partial payments to aged debt in the following manner: **"If you pay less than the total amount due on your bill then payments are distributed from oldest to newest debt.** When all the debt is the same age, payment goes in the following order toward however much you owe in each of these categories: 1. Sundry invoices (for example: bad check fees, meter tamper charges, and lien fees); 2. Penalties and interest; 3. Storm-water charges; 4. Water and sewer service and usage charges; 5. Payments against payment agreements; 6. Repair charges; 7. HELP Loans". (emphasis added).

The Philadelphia Water Department Regulations provide: **305.1 Billing.** 305.1(d) Penalties for Late Payments¹¹. (1) If current water, sewer, and storm-water bills are not paid within thirty (30) days from the date indicated on the bill, a penalty of five percent (5%) shall be imposed, (2) An additional

¹¹ Appendix C - PWD regulations; <https://www.phila.gov/water/wu/ratesregulationsresp/Pages/Regulations.aspx>

penalty of one half of one percent (0.5%) shall be imposed and added to water, sewer, and storm-water bills, and their penalties, on the due date of the bill of each succeeding cycle, except that a period of thirty (30) days shall elapse before the first additional penalty is imposed. Like PGW, the city's Water Department may file a lien with the City as a municipal claim, however, once the lien is filed, the Water Department charges only ½ percent per month or 6% interest per annum to lien water debt claims. As a city-owned utility, PGW need only look to the city's water department to gage how to apply partial payments to prior balances in accordance with §56.24 under the Code.

PGW avers that it will suffer irreparable harm if it is forced to comply with the Commission's directives to "expend substantial money, time and energy to change its systems and practices. PGW complains that "the costs for such changes will occur before start of PGW's next base rate and there is serious doubt that PGW will be able to recover the costs of such changes from rate payers". PGW's motivations for maintaining their illegal practices result from their conscious and intentional business decisions to maximize revenues; and, they woefully complain that **they cannot timely recoup costs for implementing changes to their billing and collections system by the next base rate request.**

Nowhere in their argument does PGW balance their company interest with that of the ratepayer or SBG complainants who have unwittingly overpaid monies to PGW due to their illegal and unlawful collection practices in violation of §1303 of the Public Utility Code and §§ 56.22 and 56.24 of the Commission's regulations for multiple decades. SBG has endured nearly nineteen (19) years of abusive illegal practices by PGW. The Commission has painstakingly reviewed PGW's practices and considered the broader impact that PGW's billing and collections practices has on other ratepayers, in addition to the harm caused to SBG complainants, in deciding that PGW has violated its rules, regulations and the Code. PGW has ignored the Commission's orders and continues to cause undue harm and injury to SBG complainants and others similarly situated.

Other interested parties will be substantially harmed by the stay.

While SBG complainants are an interested party in these proceedings, PGW's practices extend to all of its patrons. Staying these proceedings for an indefinite amount of time to allow for appellate review, which could take a number of years, perhaps decades, a delay only serves to continue to harm the SBG Complainants, deny them their recovery for over-payments made, and subject them to constructive defaults and mortgage foreclosure, all of which are injuries SBG complainants have endured. There are other ratepayers who are similarly situated and have been harm by PGW's violative and illegal practices. At hearing, SBG's expert witness, Roger Colton, Esq. stated that on any given month there are 80,000 PGW gas customers who make partial payments. Based upon how PGW posts partial payments and extinguishes current and accumulated late fees first before applying payments to prior balances, if there is only a \$5 per month per household over-collection from these patrons, that would equate to an extra \$400,000 per month or \$4.8 million dollars annually that PGW collects in late fees. Of course, PGW relies heavily on this scheme to boost its collections. And since the Commission was previously unaware of this practice, PGW is lamenting having to now follow the law and cease their illegal conduct. The reality is that PGW relies on their illegal practices to fill an annual \$30 million revenue hole that has resulted from PGW's own mismanagement and greed.

The City is also hurt by PGW's practices. The City issues municipal bonds based upon PGW's receivables and collections. Late fees make up 20% of PGW's revenues. If PGW's collections are based upon illegal acts, the City, its bond-holders and taxpayers are at risk for incurring SEC violations, should PGW's practices be allowed to continue unchecked and unfettered. If the City's water department can follow the law and properly apply partial payments to outstanding water claims, then PGW should also be able to conform and perform accordingly.

PGW cavalierly avers that SBG's interest are only monetary. This is not true. SBG Complainants' properties have sustained constructive mortgage defaults as a result of PGW liens placed upon them forcing the filing *writs of scire facias*. PGW is dismissive of the SBG complainants' injuries. PGW continues its illegal collections practices. PGW has never refunded money to the SBG complainants as ordered by the Commission. In November 2017, when SBG/Colonial was sold, PGW wrongfully collected over \$129,000, without ever crediting the over \$96,000 that the Commission ordered refunded to Colonial. PGW continues to misapply payments and to charge 18% interest to post-judgment, liened gas debts on SBG accounts. SBG's complainants have had to spend enormous amounts of money in legal fees and costs to defend foreclosure actions from PGW. SBG complainants has been substantially harmed by PGW's illegal practices since the early 2000s and continues to suffer injury from PGW today.

Issuing a stay pending appeal adversely affects the public interest and PGW ratepayers who do not have the ability to intensely litigate these issues for over six (6) or more years. PGW's resistance to implementing the Commission's orders demonstrates that PGW has no intention of complying with the Code and the Commission's regulations until it has exhausted every avenue of appeal, no matter what effect this action has on its gas customers or any other stakeholder. PGW has engaged in these accounting practices for decades and they have no intention of giving up their revenue scheme until they are forced to do so. The SBG complainants have been engaged with getting to the truths of their underlying billing since the early 2000s. This litigation is likely to be a ten (10) year event by the time all appeals are exhausted and the matter is finally resolved. If the Commission grants the stay pending review of the Commission's orders, PGW will continue to over-charge patrons and collect monies to which it is not entitled. *It is incumbent upon the Commission to protect the interest of the public and*

require PGW to comply with the rules, regulations found in the Public Utility Code and public utility statutes of this state pursuant to their powers under 66 Pa.C.S 101 et. seq.

Request for Expedited Action

PGW avers that the Orders require them to complete changes to its systems and practices on or before November 21, 2018. Despite being on notice since at least spring 2012 when these proceedings started, and at the latest December 8, 2016 when the Commission issued its first Opinion and Final Order, PGW has not initiated any corrective action to address the Commission's directives. In fact, PGW continues to violate the law by reordering partial payments to extinguish cumulative late fees first before applying payments to prior balances in contravention to §56.24 and continues to charge 18% interest to gas debt that is docketed as a lien judgment against the property, thus maintaining two claims against the same debt. PGW does not dispute that they impose these accounting practices to its customer's accounts. PGW admits that this has been their practice and system since prior to July 2000 when they came under the jurisdiction of the PUC. It is undisputed that PGW was not forthcoming with this practice and did not inform the Commission about its accounting methods. Furthermore, it is undisputed that PGW does not follow the regulations at §56.24 when applying partial payments to customers' prior balances or apply late fees to accounts in the manner prescribed in §56.22.

PGW seeks expedited review, however, they do not effectively articulate why they should be entitled to receive that relief. PGW has resisted implementing the Commission's multiple Orders since December 8, 2016, seeking multiple requests for rehearing and reconsideration. Moreover, PGW continues to violate the regulations and the Code and PGW admits that they have maintained these practices since prior to 2000. Needless to say, PGW is not interest in expediting resolution of these

genuine claims. Therefore, it is unfair and highly prejudicial to the SBG Complainants to grant expedited review, while PGW has slow-walked implementing the Commission's orders.

Conclusion

WHEREFORE, SBG Complainants respectfully requests that the Commission issue an Order:

- A. denying PGW's Petition for Stay Pending Review;
- B. enter an Order compelling PGW to comply with the Commission's previously issued Orders;
- C. grant such further relief in favor of SBG Complainants as may be just and reasonable under the circumstances, including refashioning the Order to relax the statute of limitations due to PGW's gross misconduct and intentional actions to circumvent Commission rules and regulations since the PGW Restructuring Order dated June 30, 2003 has been in effect.

Respectfully Submitted:

/s/ Donna S. Ross

Donna S. Ross, Esq.- Attorney for Complainants
SBG Management Services, Inc. et al.

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held June 26, 2003

Commissioners Present:

Terrance J. Fitzpatrick, Chairman
Robert K. Bloom, Vice Chairman
Aaron Wilson, Jr.
Glen R. Thomas
Kim Pizzingrilli

Pennsylvania Public Utility Commission
v.
Philadelphia Gas Works

M-00021612

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration is the Petition for Reconsideration and Clarification (Petition) filed on April 15, 2003, by the Office of Consumer Advocate (OCA). The Petition seeks reconsideration and clarification of our Opinion and Order entered at Docket Number M-00021612 on March 31, 2003 (Restructuring Order). The Restructuring Order addressed the Restructuring Petition filed by Philadelphia Gas Works (PGW) pursuant to Section 2212(g) of the Public Utility Code (Code), 66 Pa. C.S. § 2212(g).

Exhibit A

History of the Proceeding

A complete history of this proceeding may be found in our Restructuring Order at pages one through four. Our Restructuring Order resolved all issues presented by PGW's Restructuring Petition as required by Section 2212 of the Code. Included in those issues were the treatment of certain components of PGW's gas cost rate (GCR) (Restructuring Order at 25-28), tariff issues pertaining to Chapter 56 of the Commission's regulations (relating to standards and billing practices for residential utility service) (Restructuring Order at 36-45) and cost offsets relating to PGW's Universal Service program (Restructuring Order at 60-62).

In its Petition, the OCA seeks reconsideration of the Restructuring Order's resolution of certain components of PGW's GCR, clarification of the resolution relating to PGW's tariff provisions issued under Chapter 56 of our regulations and reconsideration of the Restructuring Order's resolution of the application of cost offsets to the cost of PGW's universal service program.

PGW filed a timely response on all three issues presented in the Petition. The OSBA responded only to the first issue relating to components of PGW's GCR. CEPA filed a letter response which generally expressed support for OCA's arguments on reconsideration and clarification.

On April 17, 2003, we entered an Opinion and Order at this docket which granted reconsideration, pending review of, and consideration on, the merits. Replies to the Petition have been filed by PGW and the Office of Small Business Advocate (OSBA). A letter of support for the Petition was filed by The Consumers Education and Protective Association, the Association of Community Organizations for Reform Now, The Tenant's Action Group, and the Action Alliance of Senior Citizens of Greater Philadelphia (collectively referred to as CEPA).

Discussion

The standard for reconsideration of Commission decisions is set forth in *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 533 (1985). We stated, in pertinent part, that:

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. . . . What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considered which appear to have been overlooked or not addressed by the Commission.

56 Pa. P.U.C. at 559.

This Commission's approach to reconsideration pursuant to Section 703(g) of the Code has also been discussed by the Pennsylvania Commonwealth Court. That court has held that, "The PUC has the discretion whether to act on a petition for rescission or amendment, and because the relief of rescission or amendment under Section 703(g) may result in the disturbance of final orders, it should be granted judiciously and only under appropriate circumstances." *West Penn Power Company v. Pennsylvania Public Utility Commission*, 659 A.2d 1055, 1065, 1995 Pa. LEXIS 255 (Pa. Cmwlth. 1995), *appeal denied*, 1996 Pa. LEXIS 606 (1996).

The OCA raises three discrete issues regarding the Restructuring Order. First, the OCA seeks reconsideration of our treatment of certain components of PGW's GCR. (Petition at 3-6). Second, the OCA requests clarification of that part of our Restructuring Order which addressed PGW's compliance with the consumer protection and quality of service provisions of the Natural Gas Choice and Competition Act (Act), 66 Pa. C.S. § 2201-2212. (Petition at 6-9). Lastly, the OCA seeks reconsideration of the Restructuring Order's determination regarding the application of offsets to the cost of

PGW's Universal Service program. (Petition at 10-14). We will address these issues in the order presented.

A. GCR Components

In this issue, the OCA requests that we reconsider the Restructuring Order and specifically address the OCA's position on the mechanism for the recovery of certain supply security and balancing costs. The crux of the issue is whether certain costs are to be recovered through PGW's GCR or through distribution rates. (Petition at 3-6).

On March 1, 2003, PGW submitted its annual GCR filing pursuant to Section 1307(f) of the Code, 66 Pa. C.S. § 1307(f). That GCR proceeding has been docketed at R-00038173. On May 14, 2003, PGW submitted a Joint Petition for Settlement which proposed a resolution of that proceeding. Among the signatories to that Joint Petition are the OCA and the OSBA. Included in the terms and conditions of the Joint Petition for Settlement filed at R-00038173 is a provision that proposes a resolution of this first issue presented in the Petition. (*See*, Joint Petition for Settlement filed at R-00038173 on May 14, 2003, p. 9, ¶ 11).

The OCA filed a letter at this docket on June 11, 2003, explaining that the Joint Petition for Settlement filed at R-00038173 is intended to propose a resolution of the GCR component issue presented in the Petition here. Accordingly, we will reserve the issue of PGW's GCR components to the GCR proceeding at R-00038173 and our consideration of the Joint Petition for Settlement filed at that docket.

B. Clarification of Consumer Protection, Quality of Service Issues, Chapter 56 and the Act.

This issue revolves around provisions of the Act which establish that customer service and consumer protections shall be maintained at the same level of quality under retail competition as they had prior to the effective date of the Act. Section 2206(a) of the Act provides in pertinent part:

Customer service and consumer protections and policies for retail gas customers shall, at a minimum, be maintained at the same level of quality under retail competition as in existence on the effective date of this chapter.

66 Pa. C.S. § 2206(a).

Similarly, Section 2203(7) of the Act provides:

The commission shall, at a minimum, continue the level and nature of the consumer protections, policies and services within its jurisdiction that are in existence as of the effective date of this chapter to assist low-income retail gas customers to afford natural gas services.

66 Pa. C.S. § 2203(7). As noted by the OCA, Section 2203(3) also mandates that the standards for consumer protections must be maintained “at the levels consistent with this chapter.” 66 Pa. C.S. § 2203(3).

Based on the foregoing statutory provisions, the OCA argues that the Restructuring Order is unclear about whether or not PGW may reduce existing consumer protection provisions in its historic tariff that exceed Chapter 56 requirements to the levels mandated in Chapter 56. According to the OCA, PGW has proposed “significant changes to its credit and collection policies and practices, as embedded in its current tariff, that would eliminate historical consumer protections that PGW has afforded its customers.” (Petition at 6). The OCA asserts that tariff provisions governing the length of time required for termination notices; personal contacts and other processes

surrounding termination of service; and, the length of time within which emergency medical certifications may stop the service termination process are all implicated if clarification is not provided. The OCA argues that PGW's proposed tariff reduces each of these protections from their historic levels. The OCA maintains that those changes, even if the resulting level of protection is consistent with current Chapter 56 of our regulations, would violate the Act since those protections would be reduced below the levels in existence as of the effective date of the Act. (Petition at 7-9).

PGW argues that the Act requires that consumer protections must remain at the same *level of quality* as of the effective date of the Act. However, PGW asserts that the Act does not require that PGW maintain specific pre-Act consumer service practices. Also, PGW argues that the record in this matter reveals that PGW has not only maintained its level of quality of customer service, but has improved upon it. (PGW Answer filed April 25, 2003, at 3-7). PGW also argues that while the OCA describes examples of PGW's tariffs that it would like to see maintained in prior form, it has provided no evidence as to why the former practices provide better or more effective protections to consumers than Chapter 56 protections. (*Id.* at 7-8).

In our Restructuring Order, we stated, in pertinent part, that:

The Act requires PGW to convert its accounting, billing, collection, and other systems and procedures to comply with the requirements applicable to jurisdictional gas companies and the applicable rules, regulations, and orders of the Commission. 66 Pa. C.S. § 2212(h)(1). PGW must meet the Commission's residential utility service requirements of Chapter 56 and must maintain existing consumer protections and policies at the same level of quality.

(Restructuring Order at 36).

We also stated the following in concluding our discussion of this issue:

On the effective date of this Opinion and Order, Chapter 56 will be in effect and any PGW tariff provision that does not meet the standards of Chapter 56 is void. The compliance filing resulting from this Opinion and Order is the appropriate time for PGW to revise its tariffs to conform to Chapter 56.

(Id. at 39).

Regarding the issue before us, we agree with PGW that it is the level of quality of services and protections that must be maintained per the Act. The Act does not require every specific pre-Act practice to remain in force, so long as the level of quality of services and consumer protections are not reduced. We also agree with the OCA that gas distribution companies may, but are not required to, provide protections and services that exceed Chapter 56 requirements. As we stated in the Restructuring Order, we expect PGW to comply with the Act and Chapter 56 in its compliance filing. To the extent that any party that believes PGW's compliance filing does not satisfy that directive, it may address specific tariff provisions in the context of that filing.

C. Cost Offsets

In the Restructuring Order, we directed PGW to track cost offsets generated by its Universal Service programs until its next base rate proceeding. At the time of that base rate proceeding, PGW is directed to submit cost offsets and savings, if any. (Restructuring Order at 61-62). In our discussion of this issue, we noted that “cost savings and cost offsets, on a per participant basis, should be applied to determine the net incremental costs of the new CRP [PGW's Customer Responsibility Program] participants that are recovered from ratepayers.” *(Id. at 61)*. However, we provided that any offset would be determined only after consideration of PGW's calculations based upon data gathered during operation of the new program. *(Id. at 61-62)*.

The OCA seeks reconsideration of our direction that the cost offset information be tracked and submitted at PGW's next base rate case. The OCA argues that it appears that we have overlooked the fact that PGW "will be collecting the majority of the cost of its Universal Service Programs from customers through a reconcilable surcharge beginning September 1, 2003. (PGW St. 7 at 6-7). This surcharge is to be reconciled and updated each March at the time that PGW files its Gas Cost Rate proceeding." (Petition at 12). The OCA submits that there is no indication whether PGW is to return the savings and offsets at the time of the base rate case, or how the issue is to be addressed for ratemaking purposes. (*Id.*).

According to the OCA, any attempt to apply past savings in a base rate case raises issues implicating retroactive ratemaking and rate levels. The OCA argues that a failure to apply savings and offsets in current rates raises the possibility that PGW will over recover universal service costs until its next base rate case and retain those revenues already collected. The OCA suggests that if we do not accept the OCA's offset calculations, we should direct PGW to track savings and offsets until the first Universal Service program surcharge reconciliation in March of 2004. The OCA also asserts that PGW should be directed to retain a specific expert for purposes of tracking and reporting on savings and offset data. (Petition at 13-14).

PGW rejoins that the OCA is merely repeating arguments raised below, and fails to meet the *Duick* standards. In addition, PGW asserts that the OCA's suggestion of savings and offsets were speculative, dismissed by the ALJ and not adopted by the Commission. PGW also states that the OCA's suggestion that tracking and reconciliation of the Universal Service program charge be advanced to the March 2004 reconciliation is untimely and impractical. PGW argues that the time period suggested by the OCA does not provide sufficient time to measure results and is impractical given PGW's task of moving under our regulation at the same time that it opens itself to competition. (PGW Answer filed April 25, 2003, at 8-11).

PGW points out that a base rate case is “a global proceeding, in which all aspects of expenses can be considered as well as their interrelation. PGW’s tracking may reveal that while certain expenses have decreased over the period, other [sic] will have increased.” (PGW Answer filed April 25, 2003, at 10). PGW takes the position that any recognition of savings and cost offsets in a base rate case could only be realized prospectively, but it notes that the OCA’s cost offset calculations have been found to be speculative, at best. (*Id.* at 10-11). PGW also opposes the OCA’s suggestion that we direct PGW to retain a specific expert to track and study the data. PGW argues that such a directive invades a matter within PGW’s sound and protected managerial discretion as expressly reserved in Section 2212(s) of the Act, 66 Pa. C.S. § 2212(s).

We will deny the OCA’s request for reconsideration of this issue. We agree with PGW that, to a large extent, the OCA repeats the arguments made below thus failing to meet the *Duick* standards. We also agree with PGW that the period of time from September of 2003, through March of 2004, is too short a period of time to produce adequate data to support a study detailing cost savings and offsets. Our original determination which calls for such data to be produced at PGW’s next base rate case stands. At that time, data and the resulting study can be produced and examined in the context of all of PGW’s expenses. Lastly, we will not direct PGW to retain a specific expert for the purpose of tracking and studying Universal Service cost and offset data. However, we caution PGW that the data and study produced must permit an examination following the general guidelines set forth in our policy statement at 52 Pa. Code § 69.266.

Conclusion

For the foregoing reasons, we will decline to address the first issue presented in the Petition, reserving consideration of that issue to PGW's GCR filing at Docket No. R-00038173. To the extent that our Restructuring Order required clarification regarding the application of Chapter 56 of our regulations to PGW's customer protection provisions of its tariffs, we have set forth that PGW will be required to comply with Chapter 56 as well as the provisions of the Act which require that the level of quality of those protections must not diminish from their levels as of the effective date of the Act. The OCA is free to contest particular tariff provisions in the context of PGW's compliance filing. Finally, we deny reconsideration of our Restructuring Order's determination relating to the calculation and application of offsets arising from PGW's Universal Service programs; **THEREFORE,**

IT IS ORDERED: That the Petition for Reconsideration and Clarification filed by the Office of Consumer Advocate is granted, in part, and denied, in part, consistent with this Opinion and Order.

BY THE COMMISSION,

James J. McNulty
Secretary

SEAL

ORDER ADOPTED: June 26, 2003

ORDER ENTERED: June 30, 2003