

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

REJOINDER TESTIMONY OF

BERNARD L. CUMMINGS

ON BEHALF OF
PHILADELPHIA GAS WORKS

Docket No. R-2020-3017206

Philadelphia Gas Works

General Rate Increase Request

TOPICS:

Municipal Liens

July 27, 2020

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1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME AND POSITION WITH THE COMPANY.**

3 A. My name is Bernard Cummings and I am the Vice President, Customer Service and
4 Collections, at Philadelphia Gas Works (“PGW” or Company”).

5 **Q. DID YOU PREVIOUSLY SUBMIT TESTIMONY IN THIS PROCEEDING ON**
6 **BEHALF OF PGW?**

7 A. Yes. I submitted my rebuttal testimony, PGW St. No.10-R on July 13, 2020.

8 **Q. WHAT IS THE PURPOSE OF YOUR REJOINDER TESTIMONY IN THIS**
9 **PROCEEDING?**

10 A. My rejoinder testimony responds to claims regarding municipal liens by the Office of
11 Consumer Advocate (“OCA”) that are made by OCA witness Roger Colton.

12 **Q. PLEASE SUMMARIZE YOUR REJOINDER TESTIMONY.**

13 A. My rejoinder testimony refutes the surrebuttal testimony by OCA witness Colton
14 regarding municipal liens.

15

16 **II. THE FILING OF LIENS AS A COLLECTION TOOL**

17 **Q. PLEASE RESPOND TO MR. COLTON’S SURREBUTTAL TESTIMONY**
18 **REGARDING MUNICIPAL LIENS.**

19 A. In his surrebuttal testimony, Mr. Colton emphasizes what his recommendations leave in
20 place. He does this to shift attention from what his recommendations are taking away.

21 Accepting one or both of Mr. Colton’s recommendations on liens would force PGW to
22 make a choice:¹ take nothing if a lien is filed or take what is available. In doing so, Mr.

23 Colton did not directly respond to the point I made that the Public Utility Code precludes

¹ OCA St. 5-SR at 17, 18, 26, 28.

1 the Commission from creating alternative or preclusive choices regarding the filing of
2 liens.²

3 Rather than a direct response to that point, Mr. Colton creates a strawman. Mr.
4 Colton argues that using my reasoning “*any* PUC decision imposing an arrearage
5 forgiveness ... [would] be unlawful under” my reasoning.³ That distorts my position that
6 the Commission cannot create alternative or preclusive choices regarding filing liens. The
7 strawman only relates to the underlying unpaid gas bills.⁴ My position relates to the
8 decision to file a lien (and the actual filing of a lien) in an effort to fully secure the right
9 to be paid for unpaid gas bills at a property. The proper focus is preclusive choices (and
10 the adverse consequences) being recommended by Mr. Colton that will be triggered if
11 PGW files a lien against real property, as opposed to the underlying debt itself.

12 **Q. DOES MR. COLTON AGREE THAT HIS RECOMMENDATION TO**
13 **ACCELERATE AND FORGIVE DEBT WOULD PRECLUDE THE USE OF**
14 **LIENS AS A COLLECTION TOOL?**

15 A. Yes. In his surrebuttal Mr. Colton states:

16 I agree that once pre-existing arrears are forgiven, “there would be no debt
17 amounts to be legally secured by the lien.” The only reason that my
18 recommendation would “in fact preclude the use of ‘liens’ as a tool to
19 collect this debt” is that there would be no debt to collect.⁵
20

21 In doing so, Mr. Colton accepts my position that his recommendation to
22 accelerate and forgive debt if PGW files a lien against real property would “neuter” PGW

² PGW St. 10-R at 12-13, *citing*, 66 Pa. C.S. §§ 1402(4), 1414(a) and 66 Pa. C.S. § 2212(n).

³ OCA St. 5-SR at 27.

⁴ OCA St. 5-SR at 27.

⁵ OCA St. 5-SR at 25-26.

1 liens since “without any underlying arrearage, there would be no amounts to be secured
2 by the lien.”⁶

3
4 **Q. DID MR. COLTON WITHDRAW HIS RECOMMENDATION TO**
5 **ACCELERATE AND FORGIVE DEBT, SINCE IT WOULD ELMINATE DEBT**
6 **AND PRECLUDE PGW FROM FILING A LIEN?**

7 A. No.

8 **Q. PLEASE RESPOND TO MR. COLTON’S SURREBUTTAL REBUTTAL**
9 **REGARDING THE RECOMMENDATION TO ACCELERATE AND FORGIVE**
10 **DEBT IF PGW FILES A LIEN WHICH INCLUDES DOLLARS THAT**
11 **OTHERWISE COULD BE SUBJECT TO FORGIVENESS PURSUANT TO CRP.**

12 A. In an effort downplay his admission that his recommendation will preclude the filing of
13 liens as a tool to collect this debt, Mr. Colton (incorrectly) focuses on the fact that his
14 recommendation to accelerate and forgive debt (if PGW files a lien against real property
15 for an arrearage) would not impact the non-filed, non-public lien that arises by operation
16 of law.⁷

17 That focus is misplaced. The focus should be on what the recommendation is
18 taking away, not what the recommendation leaves in place. This is especially true, when
19 one understands how municipal liens operate. The case cited by Mr. Colton⁸ states that
20 liens act as security for the unpaid gas bills. That case also notes that the filing “provides
21 notice to third parties, such as banks, other creditors, and potential real estate purchasers,
22 that there is an unsatisfied lien against the real property where the utility service was
23 provided.”⁹ It is my understanding that if the filing is not made the lien may be lost if the

⁶ PGW St. 10-R, at 12.

⁷ OCA St. 5-SR at 17, 26 OCA St. 5 at 75.

⁸ OCA St. 5-SR at 17, n4, *citing, PGW vs. PUC*, 222 A.3d 1218 (Pa.Cmwlth. 2019), *petition for allowance of appeal granted by*, 2020 Pa. LEXIS 3466 (Pa. 2020).

⁹ *PGW vs. PUC*, 222 A.3d at 1222.

1 property is sold to a subsequent bona fide purchaser.¹⁰ It follows that forcing PGW to
 2 rely entirely upon the non-filed, non-public lien would not help PGW’s efforts to address
 3 outstanding arrearages and could exacerbate the problem of increasing the amount of
 4 uncollectible debt.

5 **Q. PLEASE RESPOND TO MR. COLTON’S SURREBUTTAL REBUTTAL**
 6 **REGARDING HIS RECOMMENDATION TO PRECLUDE COST RECOVERY**
 7 **IF PGW FILES A LIEN WHICH INCLUDES DOLLARS THAT OTHERWISE**
 8 **COULD BE SUBJECT TO FORGIVENESS PURSUANT TO CRP.**

9 A. Mr. Colton (incorrectly) focuses on what his second recommendation leaves in place. He
 10 emphasizes that his recommendation does not change or “expand the dollar amount of
 11 pre-existing arrears that are subject to forgiveness.”¹¹ Again, Mr. Colton does not focus
 12 on what the recommendation is taking away. This recommendation would force PGW to
 13 make a choice: take zero cost recovery if a lien is filed or take the available cost recovery.
 14 Mr. Colton argues that taking the available cost recovery has no financial impact on
 15 PGW.¹² He gives no analysis of the lost potential dollars that could have been recovered
 16 from the filing of a lien.¹³ In doing so, he argues that “PGW has already agreed to bear
 17 the financial impacts of forgiving preexisting arrears.”¹⁴ That is misleading, since
 18 arrearage forgiveness under CRP is premised upon cost recovery. I fail to see how PGW
 19 agreed to give arrearage forgiveness without any cost recovery, since doing so would be
 20 the equivalent of providing free service and would (indirectly) impose those costs upon
 21 PGW’s ratepayers (given that PGW has no other source of funds).

¹⁰ 53 P.S. § 7440; *Augustin v. City of Philadelphia*, 897 F.3d 142, 149 (3d Cir. 2018) (Until filed, municipal liens are not matter of public record and will not cloud title held by subsequent purchasers).

¹¹ OCA St. 5-SR at 28. *See also* OCA St. 5-SR at 29 (The total amount of arrears subject to forgiveness, which PGW has already agreed to, remains the same.).

¹² OCA St. 5-SR at 28-29.

¹³ OCA St. 5-SR at 28-29.

¹⁴ OCA St. 5-SR at 28.

1 **Q. DOES MR. COLTON MISCHARACTERIZE DISCOVERY RESPONSES BY**
 2 **PGW IN ANY REGARD?**

3 A. Yes. Mr. Colton states that PGW’s discovery responses stated on occasions that the
 4 information needed to prevent the double recovery of dollars through lien payments and
 5 through arrearage forgiveness is either “not available” or “not tracked.”¹⁵ **That is wrong.**
 6 There is a difference between having an accounting system that provides a current
 7 amount owed when a request for a payoff is made (which, I testified, PGW has) and
 8 having available a list of all the times that has happened with all the financial information
 9 presented which is what Mr. Colton’s interrogatories demanded. PGW’s answers to the
 10 discovery questions reflected the fact that the data was not something we track – because
 11 there is no need to track it. Mr. Colton claimed that we were recovering both via the lien
 12 and via the arrearage forgiveness process. I testified under oath that this does not happen
 13 because our ledger query system insures that the amount that we provide to the customer
 14 or the entity seeking the payoff amount takes account of any amounts that have been
 15 forgiven. If Mr. Colton has any evidence that this has not happened (and that there is
 16 actually a double collection), he should have brought it forward. He did not. So, I would
 17 recommend that any allegations of double-collection be rejected.

18 **Q. IN HIS SURREBUTTAL TESTIMONY, MR. COLTON IS CRITICAL OF THE**
 19 **IMPACT THAT FILED LIENS MAY HAVE ON CRP PARTICIPANTS. (OCA**
 20 **ST. 5-SR AT 23-25). PLEASE RESPOND.**

21 A. The impact of liens upon the property is a matter of law. That being said, Mr. Colton is
 22 not being presented as an expert in Pennsylvania real estate transactions.¹⁶ Nonetheless,

¹⁵ OCA St. 5-SR at 23.

¹⁶ “Mr. Colton is not testifying in this matter as either a Realtor or a financier [of real property].” OCA response to PGW Interrogatory VI-25. “Mr. Colton has not studied or researched the lending habits of all financial institutions as part of his preparation for providing testimony in this matter.” OCA response to PGW Interrogatory VI-27. “Mr. Colton cannot speculate as to what the owner of a lien property may or

1 he is critical of filed liens, since a lien could impact CRP Participants’ (who are the
 2 owners of property) ability to participate in loan modifications through the Philadelphia
 3 Residential Mortgage Foreclosure Diversion Program.¹⁷ That program relates to a
 4 property subject to a foreclosure action by the lender and gives property owners a way to
 5 negotiate with their lender.¹⁸

6 The Residential Mortgage Foreclosure Diversion Program requires the owner
 7 hoping to get a loan modification through the program to first pay off all liens against
 8 them in full, or have the liens subordinated — meaning that the agency that issued the
 9 lien agrees to be paid further down the line after a foreclosure sale. These liens can
 10 include water and gas debts or real estate back taxes. Mr. Colton fails to recognize that
 11 the liens to be paid include both (1) the non-filed, non-public lien that arises by operation
 12 of law for unpaid gas bills and (2) the filed lien against the property that acts as security
 13 for the unpaid gas bills.

14 I fail to see why the impact of liens (which is a matter of law) should be used as a
 15 basis for creating preclusive choices for PGW (and the imposition of adverse
 16 consequences upon PGW if a lien is filed), since the ability to file liens existed before
 17 PGW became subject to the Commission’s jurisdiction and has continued to exist. This is
 18 particularly true since Section 1414(a) and Section 2212(n) of the Public Utility Code
 19 preserve PGW’s right to file liens under the Lien Law.

may not decide what to do.” OCA response to PGW Interrogatory VI-26. “Mr. Colton cannot reasonably know what an owner may or may not do as to their own particular property and their potential financial plans.” OCA response to PGW Interrogatory VI-28.

¹⁷ OCA St. 5-SR at 23-25. Philadelphia’s Residential Mortgage Foreclosure Diversion Program is operated as part of the judicial system. *See* 38 Pa. Bull. 2049 (May 3, 2008); 38 Pa. Bull. 2046 (May 3, 2008); 38 Pa. Bull. 2481 (May 31, 2008); 38 Pa. Bull. 4077 (August 2, 2008); 40 Pa. Bull. 237 (January 9, 2010).

¹⁸ <http://saveyourhomephilly.org/about/>.

1 **Q. BASED ON MR. COLTON'S SURREBUTTAL TESTIMONY, HAS PGW**
2 **CHANGED ITS POSITIONS ON THE RECOMMENDATIONS REGARDING**
3 **MUNICIPAL LIENS?**

4 A. No. PGW continues to recommend that Mr. Colton's recommendations on municipal
5 liens be rejected in their entirety.

6 **III. CONCLUSION**

7 **Q. DOES THAT COMPLETE YOUR REJOINDER TESTIMONY?**

8 A. Yes.

VERIFICATION

I, Bernard Cummings, hereby state that: (1) I am the Vice President, Customer Service and Collections, at Philadelphia Gas Works; (2) the facts set forth in my testimony are true and correct to the best of my knowledge, information and belief; and (3) I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Bernard L. Cummings

July 27, 2020

Dated

Bernard L. Cummings
Vice President, Customer Service and Collections
Philadelphia Gas Works