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August 12, 2022

Via Email

Honorable Eranda Vero
Office of Administrative Law Judge
Philadelphia District Office
Pennsylvania Public Utility Commission
801 Market Street
Philadelphia, PA 19107
evero@pa.gov

RE: *SBG Management Services, Inc./Simon Garden Realty Co., L.P. v. PGW*; Docket No. C-2015-2486642; *SBG Management Services, Inc./Colonial Garden Realty Co., L.P. v. PGW*; Docket No. C-2015-2486677; *SBG Management Services, Inc./Elrea Garden Realty Co., L.P. v. PGW*; Docket No. C-2015-2486674; *SBG Management Services, Inc./Fern Rock Gardens Realty Co., L.P. v. PGW*; Docket No. C-2015-2486670; *SBG Management Services, Inc./Fairmont Manor Realty Co., L.P. v. PGW*; Docket No. C-2015-2486664; *SBG Management Services, Inc./Oak Lane Realty Co., L.P. v. PGW*; Docket No. C-2015-2486655; *SBG Management Services, Inc./Marchwood Realty Co., L.P. v. PGW*; Docket No. C-2015-2486648; *SBG Management Services, Inc./Marshall Square Realty Co., L.P. v. PGW*; Docket No. C-2015-2486618; *SBG Management Services, Inc./Colonial Garden Realty Co., L.P. v. PGW*, Docket No. C-2012-2304183; and *SBG Management Services, Inc./Simon Garden Realty Co., L.P. v. PGW*, Docket No. C-2012-2304324

Dear Judge Vero:

In anticipation of the Pre-Hearing Conference, I wanted to update you on a recent development affecting this proceeding before the Pennsylvania Public Utility Commission (“Commission” or “PUC”). On August 10th, the Philadelphia Court of Common Pleas granted in part and denied in part Philadelphia Gas Works’ (“PGW”) most recent Preliminary Objections with respect to the civil suit filed by, *inter alia*, the entities listed in the above caption.¹ For the purposes here, the material effect of this ruling (attached) is that the matter will proceed as to the remaining Plaintiffs (some nine were dismissed from the suit). The remaining Plaintiffs are identical to the

¹ *SBG Management Services Inc., et. al. v. City of Philadelphia c/o Philadelphia Gas Works*, April Term 2021 No. 02801.

eight entities that have previously filed complaints at the PUC and SBG Management Services, and that are listed in the above caption.

Given the issuance of this Common Pleas Court Order and the prehearing conference scheduled for August 25, 2022, this is an appropriate time for PGW to present its position on the ability of the Complainants to obtain relief from the Commission regarding amounts “charged on” and subject to docketed municipal liens and, therefore, the appropriateness of continued discovery and/or the establishment of a litigation schedule on these issues at the PUC.

Simply put, as discussed herein, PGW submits that the Commission lacks jurisdiction over amounts “charged on” and subject to docketed municipal liens (judgments) for these (and any other) Complainants, all of whom are pursuing these issues in another forum.

To begin, PGW acknowledges that Ordering Paragraph 2 of the Commonwealth Court’s Order (dated March 16, 2022) states:

As agreed by the parties, this matter is REMANDED to the Pennsylvania Public Utility Commission (Commission) in part, solely for the presentation of evidence by the parties and a determination by the Commission concerning the correct amounts of any refunds owed by PGW to SBG Management Services, Inc., Colonial Garden Realty Company and Simon Garden Realty Company (collectively, Intervenors) relating to late fees charged on docketed municipal liens against Intervenors for unpaid natural gas charges prior to April 29, 2021.²

However, PGW submits that the above-described inquiry is beyond the Commission’s jurisdiction for the following reasons:

First, the underlying utility bills can no longer provide the basis for Commission jurisdiction, since they were extinguished by the docketed municipal lien (judgment). While the remaining jurisdiction of the Commission with respect to matters subject to a filed lien may have been unclear prior to the Supreme Court decision, it has now become crystal clear. As explained in Ordering Paragraph 2 of *PGW III*, the claims relate to “fees charged on docketed municipal liens.” The Pennsylvania Supreme Court held, in *PGW II*,³ that docketed municipal liens constitute a judgment pursuant to Section 3(b)⁴ of the Lien Law.⁵ The doctrine of merger applies, since the docketed municipal lien is a judgment.⁶ Under the doctrine of merger, the amounts due

² *PGW v. PUC*, 276 A.2d 1219, 2022 WL 793332 (Pa. Commw. 2022) (“*PGW III*”).

³ *PGW v. PUC*, 249 A.3d 963 (Pa. 2021) (“*PGW II*”).

⁴ 53 P.S. § 7106(b).

⁵ The Municipal Claims and Tax Lien Act, 53 P.S. § 7101, *et seq.* (“Lien Law”).

⁶ *PGW II*, 249 A. 3d at 974.

in the underlying utility bills are merged into the judgment and can no longer provide an independent basis for determining the obligations of the parties.⁷

Specifically, the Supreme Court stated that judgments created by docketing municipal liens are the equivalent of a final resolution of a claim between parties. *PGW II*, 249 A.3d at 970, 973. (“By expressly stating that the docketed lien is to be treated like a judgment with regard to the underlying claim, the General Assembly has expressed its intent that docketing the lien have the same effect as a final determination of a dispute between parties without further proceedings that would generally be required to effectuate the result.”).

In 2015, your Honor found the same, *citing Equitable Gas*,⁸ explaining that a “... judgment extinguishes any claims with respect to the overdue bill ...”⁹ It follows that the underlying bills that are subject to a docketed municipal lien (judgment) do not provide a viable basis for the Commission’s jurisdiction.¹⁰

Jurisdiction over those statutory remedies lies with the courts, not the Commission. There is, therefore, no viable basis for the Commission to review the amounts “charged on” and subject to docketed municipal liens. The existence of any judgment ends the Public Utility Commission’s jurisdiction. Notwithstanding the Commonwealth Court’s Order, the Commission must act within, and cannot exceed, its jurisdiction.¹¹ Jurisdiction may not be conferred by the parties where none exists.¹²

⁷ See, e.g., *In re Stendardo*, 991 F.2d 1089, 1094-1095 (3d Cir. 1993).

⁸ *Equitable Gas v. Wade*, 812 A.2d 715, 718-719 (Pa.Super. 2002). In *Equitable Gas*, Equitable commenced an *in personam* civil action in the Court of Common Pleas against a former customer. Judgment was entered by the trial court in favor of Equitable, but there was a dispute over the amount of post-judgment interest. The Superior Court held that the legal rate of post-judgment interest is 6% per year, pursuant to 42 Pa.C.S. § 8101 (as opposed to the 18% annual interest under Equitable’s Commission-approved tariff). Post-judgment interest was applicable, however, only after the judgment had been entered by the trial court.

⁹ Initial Decision at 62, available at <https://www.puc.pa.gov/pcdocs/1382333.docx>. Rather than use the word “extinguished,” the Commission characterized “the effect of the municipal lien on the same debt as accrued pursuant to a Commission-approved tariff, as ‘removed’ [from the Commission’s jurisdiction].” Opinion and Order of the Commission issued December 8, 2016 (“December 2016 Order”) at 73, available at <https://www.puc.pa.gov/pcdocs/1491938.docx>.

¹⁰ Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa.Cmwlth. 1992), *appeal denied*, 637 A.2d 293 (Pa. 1993). The Commission has jurisdiction over utility bills as long as there is no docketed municipal lien (judgment), since only docketed municipal are to be treated in the same manner as a judgment that has been rendered following an adjudicative process. See footnote 6.

¹¹ *City of Pittsburgh v. PUC*, 43 A.2d 348 (Pa.Super. 1945).

¹² *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

Of course, the Commission's statutory authority does not include the power to award monetary damages.¹³ Nor does the Commission's authority include the power to review the merits of a judgment. *Gasparro v. PUC*, 814 A.2d 1282, 1285 (Pa.Cmwlth. 2003) (PUC lacks jurisdiction after a judgment exists). In *Gasparro*, the customer filed a complaint with the Commission after the utility had obtained a default judgment against the customer. The Commonwealth Court held that the Public Utility Code did not empower the Commission to review the merits of that judgment or to conduct a post-judgment review of the underlying facts and charges. Ruling on the amounts owed, if any, as a result of the application of *PGW II* would be reviewing the merits and extent of such judgment.

Judgments are subject to the Judicial Code,¹⁴ which is not within the Commission's jurisdiction. In fact, in December 2016, because the Commission lacked jurisdiction over liens, the Commission directed that lien amounts be removed from the bills¹⁵ and ordered that any refund proceed through the courts.¹⁶ The Supreme Court's direction that lien amounts (docketed municipal liens) be treated as judgments emphasizes the end of the Commission's jurisdiction over the amounts subject to docketed municipal liens (judgments).

And, in fact, the Complainants **are** proceeding through the courts. The Complainants commenced a civil action in April 2021, as noted in PGW's December 2021 status report.¹⁷ Their claim is that the complainants paid too much late fee interest on the judgments (docketed municipal liens) because the gas arrearages became judgments once liens for those amounts were filed, and the correct interest rate on those arrearages transformed from PGW's tariffed 18% Late Payment Charge to the statutory post judgment interest rate (6%).¹⁸ The same claims are described in the civil complaint, which we also attach.

¹³ See, e.g., *Elkin v. Bell Telephone of Pennsylvania*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell of Pennsylvania*, 383 A.2d 791 (Pa. 1978).

¹⁴ 42 Pa.C.S. § 8101, *et seq.*

¹⁵ This direction was based on 66 Pa.C.S. § 501. The Commission did not direct a refund under 66 Pa.C.S. § 1312. The Commission's refund power, 66 Pa.C.S. § 1312, is limited to tariff rates. *PGW II* makes it clear that tariffed-based late payment charges on unpaid bills (undocketed lien amounts) are different than the interest due on a judgment (on docketed municipal liens). See *PGW II*, 249 A.3d at 974. Thus, the Commission cannot rely upon Section 1312 to direct refunds of amounts "charged on" docketed municipal liens (judgments).

¹⁶ December 2016 Order at 89, 93, 109.

¹⁷ <https://www.puc.pa.gov/pdocs/1727858.pdf>. On May 17, 2022, Plaintiffs filed their Third Amended Complaint with the Philadelphia Court of Common Pleas (April Term 2021, Docket No. 02801). PGW filed timely preliminary objections to the Third Amended Complaint. The Court has not decided the preliminary objections to the Third Amended Complaint.

¹⁸ Based on the allegations in the Third Amended Complaint, the Complainants (together with other Plaintiffs) assert claims for breach of contract (Count I) and unjust enrichment (Count II). The allegations of harm appear to be directed only at paid (satisfied) docketed municipal liens (judgments). The allegations do not clearly assert harm related to (a) unpaid bills that are not subject to a docketed municipal liens (judgments), which would be within the Commission's jurisdiction; or, (b) unpaid (outstanding) docketed municipal liens (judgments), which would be beyond the Commission's jurisdiction.

Relief should not be available from the Commission with respect to issues raised in a civil action before the courts.¹⁹ This avoids a duplication of effort on the part of the parties, avoids wasting Commission resources, and avoids the unseemly spectacle of a race to resolution. In fact, in the Third Amended Complaint before the Court of Common Pleas, the Plaintiffs aver that: “Courts offer the only avenue of recourse in contesting the [judgment (docketed municipal lien)], as ‘there is no relief which the Commission has authority to provide to a successful litigant, either ratepayer (debtor) or utility (creditor), based upon a dispute regarding a [judgment (docketed municipal lien)].’”²⁰

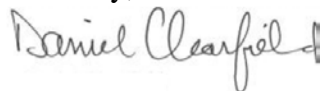
Stated otherwise, to the extent that your Honor holds that the Commission has jurisdiction to act on the inquiry under Ordering Paragraph 2, your Honor should, nonetheless, defer action on the inquiry under Ordering Paragraph 2 because (a) it is the subject of a pending civil action involving exactly the same parties; (b) the Commission cannot award monetary damages or review or alter a judgment once entered; and, (c) Commission action on the said inquiry is (or could be) an improper collateral attack on the pending decision of Philadelphia County Court of Common Pleas.

Based on the foregoing, PGW respectfully requests that your Honor take action to promptly close (or otherwise dispose of) the “lien” portions of the 2012 Complaints and the 2015 Complaints prior to final resolution of any other issues, since the Commission lacks jurisdiction over amounts “charged on” and subject to docketed municipal liens (judgments). Alternatively, PGW requests that your Honor defer action on the inquiry under Ordering Paragraph 2 until there is a final disposition of the civil proceeding in the Philadelphia Court of Common Pleas.

If your Honor desires a formal motion²¹ to challenge the Commission’s jurisdiction regarding amounts “charged on” and subject to docketed municipal liens, please let us know and we will be happy to file a motion.

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

Sincerely,



Daniel Clearfield

cc: Rosemary Chiavetta, Secretary (via e-file only)
Certificate of Service (via email only)

¹⁹ Paragraphs 23 to 37 of the Third Amended Complaint aver that the Plaintiffs “have exhausted administrative remedies before the Commission insofar as the damages relate to docketed municipal liens.”

²⁰ Third Amended Complaint at ¶ 29, *citing*, the December 2016 Order at 79.

²¹ 52 Pa.Code §§ 5.102 or 5.103.

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ROOM 521

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

R. POSTELL
COMMERCE PROGRAM

<p>SBG MANAGEMENT SERVICES, INC, et al.,</p> <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>CITY OF PHILADELPHIA C/O PHILADELPHIA GAS WORKS,</p> <p style="text-align: right;">Defendant.</p>	<p>APRIL TERM, 2021</p> <p>NO. 02801</p> <p>COMMERCE PROGRAM</p> <p>CONTROL NO. 22061499</p>
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ORDER

AND NOW, this 10th day of August, 2022, upon consideration of Defendant City of Philadelphia c/o Philadelphia Gas Works' Preliminary Objections to Plaintiffs' Third Amended Complaint, Plaintiffs' response thereto, and all matters of the record, it hereby is **ORDERED** that Defendant's Preliminary Objections are **Sustained In Part and Overruled In Part** as follows:

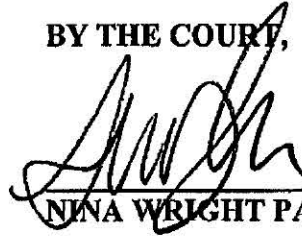
1. Plaintiffs Allens Lane Realty Co., LP, Cresheim Valley Realty Co., LP, Darrah School Realty Co., LP, Green Tree Realty Co., LP, Mt. Pleasant Realty Co., LP, SBG Management Co. of Delaware, LP d/b/a Winchester Court Realty Co., LP, Squirrel Hill Realty Co., LP, Admiral Court Realty Co., LP, Dorsett Court Realty Co., LP are **Dismissed.**¹
2. All other Preliminary Objections are **Overruled.**

¹ The Supreme Court's decision in PGW II applies retroactively "only to parties to this litigation and to other proceedings pending at the time the PGW II decision was issued in April 2021." See *PGW v. PUC*, 276 A.3d 1219 (Pa. Cmwlth. 2022). Here, SBG Management Services, Inc., Colonial Garden Realty Company, and Simon Garden Realty Company were Intervenor in PGW II. Also, the Third Amended Complaint lists eight pending proceedings before the PUC that were commenced by eight property owners. See Third Amended Complaint ¶ 24. There are no allegations in the Third Amended Complaint that the other nine property owners were parties to PGW II or any other pending proceedings. Therefore, PGW II cannot be applied retroactively to those nine property owners.



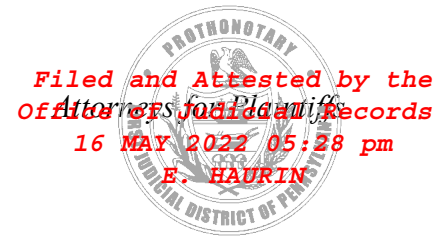
It is **FURTHER ORDERED** and **DECREED** that Defendant shall file an Answer to the Third Amended Complaint within twenty (20) days of the date that this order is docketed.

BY THE COURT,

A handwritten signature in black ink, appearing to read "Nina Wright Padilla", written over a horizontal line.

NINA WRIGHT PADILLA, S.J.

GOLDSTEIN LAW PARTNERS, LLC
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IN THE COURT OF COMMON PLEAS OF PHILADELPHIA, PENNSYLVANIA
CIVIL ACTION – LAW

SBG MANAGEMENT SERVICES, INC, ET AL.	:	
	:	COMMETCE PROGRAM
Plaintiffs	:	
	:	APRIL TERM 2021
V.	:	
	:	NO. 02801
CITY OF PHILADELPHIA C/O	:	
PHILADELPHIA GAS WORKS,	:	
	:	
Defendant.	:	

CIVIL ACTION COMPLAINT

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance, personally or by attorney, and filing, in writing with the court, your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money, property or other rights important to you. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, OR CAN NOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

LAWYER REFERRAL SERVICE
Philadelphia County
One Reading Center, 11th Floor
Philadelphia, PA 19107
(215) 238-6333
TTY (215) 451-6197

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su personal. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importante para usted. LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

SERVICIO DE REFERENCIA LEGAL
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One Reading Center, 11th Floor
Philadelphia, PA 19107
(215) 238-6333
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GOLDSTEIN LAW PARTNERS, LLC
By: Michael Yanoff (Attorney I.D. # 19384)
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Attorneys for Plaintiffs

<p>SBG MANAGEMENT SERVICES, INC. PO Box 549 Abington, PA 19001</p> <p>and</p> <p>FAIRMOUNT MANOR GARDEN REALTY CO., LP 606 N. Marshall Street, Philadelphia, PA 19123</p> <p>and</p> <p>FERN ROCK GARDENS REALTY CO., LP 900-938 W. Godfrey Avenue Philadelphia, PA 19141</p> <p>and</p> <p>MARCHWOOD REALTY CO., LP 5515 Wissahickon Avenue Philadelphia, PA 19144</p> <p>and</p> <p>MARSHALL SQUARE REALTY CO., LP 844 N. 6th Street, Philadelphia, PA 19123</p> <p>and</p> <p>OAK LANE GARDEN REALTY CO., LP 1623-25 Chelton Avenue Philadelphia, PA 19126</p> <p>and</p>	<p>IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA</p> <p>APRIL TERM 2021</p> <p>No. 02801</p> <p>COMMERCE PROGRAM</p>
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SIMON GARDENS REALTY CO., LP
6731 Musgrave Street,
Philadelphia, PA 19119

and

ALLENS LANE REALTY CO., LP
126 W. Allens Lane
Philadelphia, PA 19119

and

CRESHEIM VALLEY REALTY CO., LP
7200 Cresheim Road
Philadelphia, PA 19119.

DARRAH SCHOOL REALTY CO., LP
718 N. 17th Street
Philadelphia, PA 19130.

and

GREEN TREE REALTY CO., LP
330 W. Johnson Street
Philadelphia, PA 19144

and

MT. PLEASANT REALTY CO., LP
406 W. Mt. Pleasant Avenue
Philadelphia, PA 19119

and

**SBG MANAGEMENT CO. OF DELAWARE,
LP DBA WINCHESTER COURT REALTY
CO., LP**
4804 Chester Avenue
Philadelphia, PA 19143

and

SQUIRREL HILL REALTY CO., LP
1018 S. 48th Street
Philadelphia, PA 19143.

<p style="text-align: center;">and</p> <p>COLONIAL GARDEN REALTY CO., LP 5425-7 Wayne Avenue, Philadelphia, PA 19144</p> <p style="text-align: center;">and</p> <p>ELRAE GARDENS REALTY CO. LP 3610 Spring Garden Street Philadelphia, PA 19104</p> <p style="text-align: center;">and</p> <p>ADMIRAL COURT REALTY CO., LP 237 S. 48th Street Philadelphia, PA 19143</p> <p style="text-align: center;">and</p> <p>DORSETT COURT REALTY CO., LP 4710 Locust Street Philadelphia, PA 19143</p> <p style="text-align: right;"><i>Plaintiffs</i></p> <p style="text-align: center;">v.</p> <p>CITY OF PHILADELPHIA C/O PHILADELPHIA GAS WORKS, 800 W. Montgomery Avenue Philadelphia, PA 19122</p> <p style="text-align: right;"><i>Defendants.</i></p>	

THIRD AMENDED COMPLAINT

The above-named Plaintiffs, (collectively “Plaintiffs”), by and through their attorneys Goldstein Law Partners, LLC, hereby bring this action against the City of Philadelphia c/o

Philadelphia Gas Works (“PGW”) for breaching its service contracts with Plaintiffs (“PGW Service Contracts”) by committing systemic violations of the Pennsylvania Public Utilities Code, 66 Pa C.S. §101 *et seq.*, that resulted in substantial monetary damages. For decades, pursuant to the terms and obligations set forth in the PGW Service Contracts with Plaintiffs, PGW engaged in a practice where it docketed delinquent amounts owed by gas customers as municipal liens, and simultaneously continued to charge interest on the delinquent amounts at the tariff rate of eighteen percent (18%). When Plaintiffs paid their monthly gas bills, a bulk of the amount was allocated to paying off the substantial interest that accrued each year. The principal amounts remained virtually unchanged.

On April 29, 2021, the Pennsylvania Supreme Court ruled that the Municipal Claims and Tax Liens Act (MCTLL or Liens Act), 53 P.S. §7106(b), did not allow PGW to proceed simultaneously to: (i) docket the delinquent amount as a municipal lien *and* (ii) continue charging the tariff rate of 18% on all past due balances. *See PGW v. PUC*, 249 A.3d 963, 973 (Pa. 2021). **“The docketing of [a municipal] lien shall be given the effect of a judgment against the said property[.]”** 53 P.S. § 7106(b) (emphasis added).¹ In articulating the opinion of the Pennsylvania Supreme Court, Justice Donohue explained that this language denoted the General Assembly’s intent for municipal liens in Philadelphia to be treated as final judgments, thus enabling a public utility company to execute on such docketed liens without the need for adjudication on the merits. *PGW*, 249 A.3d 963 at 973.

It is apparent from the unambiguous language of Section 7106 that the General Assembly intended docketed municipal liens in counties of the first class to be treated in the same manner as a judgment that has been rendered following an

¹ A true and correct copy of the Pennsylvania Supreme Court’s Opinion is attached hereto, made a part hereof, and marked as Exhibit “A.”

adjudicative process. **As a result, only the statutory post-judgment interest rate of 6% per annum applies, not the tariff rate.**

Id. at 974 (emphasis added). The statute forces PGW to make a choice. It can either docket the delinquent balance as a municipal lien and execute, or allow interest to accrue on the delinquent amount at the 18% tariff rate as specified by the PGW Service Contracts (incorporating by reference the Sect. 4.2 of the published PGW Gas Service Tariff Rate). *See* Exhibit C, *infra*. Section 7106 does not allow PGW to avail itself of *both* remedies simultaneously. *Id.* (“While this interpretation may force a municipality to choose between forgoing the collection of the tariff rate on a delinquent account in favor of obtaining a judgment upon which it can execute, this is a choice Section 7106 requires.”).

For decades, PGW has been overcharging Plaintiffs on delinquent balances docketed as municipal liens – using the 18% tariff rate to calculate the accrued interest in violation of both the law and its obligations under the PGW Service Contracts with Plaintiffs. Section 7106 does not allow PGW to proceed in this fashion. PGW is not permitted to charge greater than 6% statutory interest rate for any amount reduced and docketed as a municipal lien. On remand in a memorandum decision dated March 16, 2022, the Commonwealth Court “conclude[d] that [the Pennsylvania] Supreme Court’s decision in PGW II [the decision of April 29, 2021] *applies retroactively only as to parties to this litigation and to other proceedings pending at the time the PGW II decision was issued in April 2021.*” *See PGW v. PUC*, 1291 C.D. 2018, at *29 (Pa. Cmwlth. March 16, 2022) (emphasis added). This includes the Plaintiffs to this litigation, as they were parties to separate parallel proceedings before the Public Utility Commission (“PUC”) stayed pending the ultimate outcome of the appeals to the Commonwealth Court and Supreme Court. Plaintiffs are, thus, entitled to the full repayment of all amounts for which PGW

improperly overcharged as a result of its breach. In support of this demand for relief, Plaintiffs state as follows.

INTRODUCTION

1. Plaintiffs are property owners (“Plaintiff Property Owners”) in the City of Philadelphia, who were gas customers of PGW with service contracts (“PGW Service Contracts”) wherein PGW supplied natural gas at all Plaintiffs’ property locations. Each of these locations are equipped with meter(s) to track gas usage for specific delineated areas inside the given property.

2. Plaintiff SBG Management Services, Inc. (“SBG”) is the company that manages the properties for the named Plaintiffs, and is also a party to the service contracts with PGW.

3. PGW sends Plaintiffs monthly invoices for the unpaid amounts owed in exchange for the natural gas services supplied to each property location. A true and correct copy of a sample PGW invoice sent to SBG is attached hereto as Exhibit “B”

4. The invoices, which PGW sends to SBG and/or to Plaintiff Property Owners, contain the basic terms of the PGW Service Contracts between the parties.

5. In particular, the PGW Service Contracts specify that the monthly charges depend, in part, upon “*the PGW Gas Service tariff [found] on pgworks.com for full details.*” See Exhibit B (Sample PGW Invoice at 2 of 4).

6. The PGW Gas Service tariff includes as an eighteen percent (18%) interest rate for delinquent balances – that is, PGW’s Service Contracts expressly specify that PGW charges SBG and Plaintiff Property Owners an 18% rate of interest for past due amounts.

7. Here, SBG and Plaintiff Property Owners were, in fact, charged interest on delinquent balances at the 18% tariff rate *after* PGW docketed the balances as municipal liens.

8. Since July 2000, PGW is considered a public utility subject to the jurisdiction of the Pennsylvania Public Utility Commission (“PUC”).

9. PGW is a “city natural gas distribution operation furnishing gas service to [] propert[ies]” and, thus, “entitled to impose or assess a municipal claim against [a] property and file as liens of record claims for unpaid natural gas distribution service and other related costs[.]” 66 Pa. C.S.A. § 1414(a).

10. All liens and claims for unpaid natural gas distribution service and related costs – that is, the obligation to pay PGW in exchange for natural gas services – derive directly from contractual relationships between PGW and its gas customers, like the PGW Service Contracts at issue in this matter.

11. Nearly two decades ago, PGW implemented the practice where it assessed late payment charges at 1.5% per month – or 18% per annum – for any outstanding balance on active accounts. This included delinquent amounts that PGW reduced to a municipal lien and docketed with the Philadelphia Court of Common Pleas. A true and correct copy of PGW’s Gas Service Tariff identifying the 18% tariff rate per annum is attached hereto as Exhibit “C” (PGW Gas Service Tariff Rate at pp. 26, Sect. 4.2 Finance Charge on Late Payments).

12. PGW chose not to disclose this practice explicitly to its customers, which includes Plaintiffs. Neither customer billing statements, nor customer statements of account, describe PGW’s use of its 18% tariff rate for delinquent amounts docketed as municipal liens.

13. Instead, PGW relied and continues to rely upon the online published PGW Gas Service Tariff Rate, which specifies the 18% tariff rate under Section 4.2, Finance Charge on Late Payments. *See* Exhibit C.

14. PGW improperly charged interest to Plaintiffs on delinquent amounts, including late fees and penalties, using the 18% tariff rate to calculate interest, thereby violating the Pennsylvania Public Utilities Code and the Municipal Claim and Tax Liens Law, which thereby breached the PGW Service Contracts with SBG and Plaintiff Property Owners.

15. Further, PGW reordered payments made by Plaintiffs in order to reduce more recent non-interest-bearing balances while allowing older interest-bearing balances to remain.

16. Under the Pennsylvania Supreme Court's decision in *PGW v. PUC*, 249 A.3d 963, 973 (Pa. 2021), PGW has been collecting inflated interest, penalty and finance charges since 2004. A true and correct copy of the Supreme Court's decision is hereby attached as Exhibit "A"

17. PGW must not only cease and desist this practice, but it must compensate Plaintiffs who have suffered financial harm for almost twenty (20) years.

18. Section 7106(b) provides:

(b) With the exception of those claims which have been assigned, **any municipal claim, municipal lien, tax, tax claim or tax lien, including interest, penalty and costs, imposed by a city of the first class, shall be a judgment only against the said property when the lien has been docketed by the prothonotary.** The docketing of the lien shall be given the effect of a judgment against the said property only with respect to which the claim is filed as a lien. The prothonotary shall maintain an in rem index, the form and location of which shall be within the prothonotary's discretion. All tax claims, water rents or rates, lighting rates, power rates and sewer rates heretofore filed are hereby ratified, confirmed and made valid subsisting liens as of the date of their original filing.

53 P.S. § 7106(b) (emphasis added).

19. Section 7106(b) statutorily required PGW to apply the standard statutory post-judgment interest rate of 6% per annum to delinquent amounts that it reduced to a municipal lien. PGW ignored the plain and unambiguous language of Section 7106(b) for nearly two decades, thereby overcharging Plaintiffs for delinquent balances and breaching the terms of its PGW Service Contracts.

20. To this end, PGW overcharged Plaintiffs at the 18% tariff rate for all delinquent balances, including those balances attributable to individual tenants of Plaintiffs – amounts for which the terms of the PGW Service Contracts make SBG and Plaintiff Property Owners responsible.

JURISDICTION AND VENUE

21. This Court has jurisdiction over this action because the activities at issue in this matter occurred within the Commonwealth of Pennsylvania.

22. Venue is proper in the Court of Common Pleas of Philadelphia County because the City and County of Philadelphia is where the causes of action arose and/or is where the transaction or occurrence took place out of which the causes of action arose.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

23. Plaintiffs in this matter are also claimants against PGW in proceedings before the PUC, which are identical and parallel to the matter in which the Pennsylvania Supreme Court decided on April 29, 2021.

24. These parallel PUC proceedings were pending at the time of the Supreme Court's decision in 2021, and are captioned as follows:

- (a) C-2015-2486618 (SBG/Marshall Square Realty Co L.P.);
- (b) C-2015-2486642 (SBG/Simon Garden Realty Co L.P.);
- (c) C-2015-2486648 (SBG/Marchwood Realty Co L.P.);
- (d) C-2015-2486655 (SBG/Oak Lane Realty Co. L.P.);
- (e) C-2015-2486664 (SBG/Fairmount Manor Realty Co L.P.);
- (f) C-2015-2486670 (SBG/Fern Rock Realty Co L.P.);
- (g) C-2015-2486674 (SBG/Elrae Garden Realty Co. L.P.); and

(h) C-2015-2486677 (SBG/Colonial Garden Realty Co L.P.)

25. The Commission limited its decision to interpreting the tariff authority under 56 Pa. Code § 56.22(a), focusing on the scope of the rate authorized by this regulation to charge late fee payments. A true and correct copy of the Order issued by the PUC on December 8, 2016 is attached hereto as Exhibit “D” (PUC Order, 12/8/2016, at 66-67).

26. The Commission clarified that it lacked jurisdiction over municipal liens, including “[the] jurisdiction to address the validity and enforcement of liens.” *Id.* at 67. “The Commission has jurisdiction over public utilities pursuant to the Public Utility Code, 66 Pa.C.S.A § 101, *et seq.*, not over municipalities acting in their municipal capacity.” PUC Order, 12/8/2016, at 66-67 (internal citation and quotation marks omitted).

27. The Commission always recognized, “it has subject matter jurisdiction over a service or billing issue raised in a lien-related complaint[.]” which allowed it “[to] find[] that PGW improperly imposed late payment charges on past due amounts subject to a municipal lien[.]” A true and correct copy of the Order issued by the PUC on August 23, 2018 is attached hereto as Exhibit “E” (PUC Order, 8/23/2018). The Commission distinguished its regulatory jurisdiction with its lack of jurisdiction “over a past due balance [itself] that is subject to a municipal lien.” *Id.*

28. The Commission lacks authority “to adjudicate complaints that seek to contest municipal liens that have been filed with the appropriate prothonotary.” *Id.*

29. Courts offer the only avenue of recourse in contesting the underlying lien amount, as “there is no relief which the Commission has authority to provide to a successful litigant, either ratepayer (debtor) or utility (creditor), based upon a dispute regarding a lien.” PUC Order, 12/8/2016, at 79.

30. According to the Commission, it has authority to declare rates unreasonable and order them removed from a complainant's bill, but it “[cannot] make a successful litigant whole [in a challenge to the underlying debt of a municipal lien].” *Id.* at 79-80 (emphasis added).

31. The Pennsylvania Supreme Court has long-recognized, “[t]he Public Utility Commission has no jurisdiction to entertain a proceeding by a public utility [or ratepayer] to recover [money damages].” *Bell Tel. Co. v. Philadelphia Warwick Co.*, 50 A.2d 684, 688 (Pa. 1947).

32. “[The Commission] cannot give relief to [a] plaintiff by awarding him a judgment, followed, if necessary, by a writ of execution.” *Id.* Only the Court of Common Pleas has such authority. *Id.* The Commission, however, is equipped to redress “complaining of rates or regulations which [are] under [its] control[.]” *Id.*

33. Accordingly, the Commission refrained from deciding (i) “whether a municipal lien will, or will not, be construed to be the functional equivalent of a ‘judgment’ according to law[;]” and (ii) whether “the permissible rate of interest on the indebtedness secured by a municipal lien” is the rate of 6% post-judgment interest under 42 Pa.C.S.A. § 8101, “or the statutory ‘capped’ rate of 10% under the [MCTLL], or some other percentage.” PUC Order, 12/8/2016, at 69-71.

34. The Commission found that the Court of Common Pleas must decide the ultimate redress as to the ratepayer, once (and if) a municipal lien has been recorded and the civil collections process initiated. *Id.*

35. Following the Pennsylvania Supreme Court's decision, the Commonwealth Court ruled that the holding “applies retroactively only as to parties to this litigation [the appeal itself]

and to other proceedings pending at the time the PGW II decision was issued in April 2021.”
See PGW v. PUC, 1291 C.D. 2018 at *29.

36. Neither the decision by the Supreme Court, nor the decision by Commonwealth Court on remand, altered the Commission’s determination regarding the scope of its own jurisdiction.

37. Plaintiffs – who are also claimants in PUC proceedings that were pending at the time of the Supreme Court’s decision in April 2021 – have exhausted administrative remedies before the Commission *insofar as the damages relate to docketed municipal liens*.

PARTIES

38. Plaintiffs hereby incorporate by reference the averments of Paragraphs 1 through 37 above as fully as though set forth herein at length.

39. Plaintiff SBG Management Services, Inc., (“SBG”) is a corporation organized and authorized to do business under the laws of the Commonwealth of Pennsylvania, with its principal place of business located at P.O. Box 549, Abington, PA 19001.

40. Plaintiff Fairmount Manor Garden Realty Co., LP (“Fairmount Manor”) is a Pennsylvania limited partnership, with its principal place of business located at 606 N. Marshall Street, Philadelphia, PA 19123. Fairmount Manor is the owner of a multi-family residential apartment rental complex, which is located in the City of Philadelphia, and which receives gas services from PGW.

41. Plaintiff Fern Rock Gardens Realty Co., LP (“Fern Rock”) is a Pennsylvania limited partnership, with its principal place of business located at 900-938 W. Godfrey Avenue, Philadelphia, PA 19141. Fern Rock is the owner of a multi-family residential apartment rental

complex, which is located in the City of Philadelphia and which receives gas services from PGW.

42. Plaintiff Marchwood Realty Co., LP (“Marchwood”) is a Pennsylvania limited partnership, with its principal place of business located at 5515 Wissahickon Avenue, Philadelphia, PA 19144. Marchwood is the owner of a multi-family residential apartment rental complex, which is located in the City of Philadelphia, and which receives gas services from PGW.

43. Plaintiff Marshall Square Realty Co., LP (“Marshall Square”) is a Pennsylvania limited partnership, with its principal place of business located at 844 N. 6th Street, Philadelphia, PA 19123. Marshall Square is the owner of a multi-family residential apartment rental complex, which is located in the City of Philadelphia, and which receives gas services from PGW.

44. Plaintiff Oak Lane Garden Realty Co., LP (“Oak Lane”) is a Pennsylvania limited partnership, with its principal place of business located at 1623-25 Chelton Avenue, Philadelphia, PA 19126. Oak Lane is the owner of a multi-family residential apartment rental complex, which is located in the City of Philadelphia, and which receives gas services from PGW.

45. Plaintiff Simon Gardens Realty Co., LP (“Simon Gardens”) is a Pennsylvania limited partnership, with its principal place of business located at 6731 Musgrave Street, Philadelphia, PA 19119. Simon Gardens is the owner of a multi-family residential apartment rental complex, which is located in the City of Philadelphia, and which receives gas services from PGW.

46. Plaintiff Allens Lane Realty Co., LP (“Allens Lane”) is a Pennsylvania limited partnership, with its principal place of business located at 126 W. Allens Lane, Philadelphia, PA

19119. Allens Lane is the owner of a multi-family residential apartment rental complex, which is located in the City of Philadelphia, and which receives gas services from PGW.

47. Plaintiff Cresheim Valley Realty Co., LP (“Cresheim Valley”) is a Pennsylvania limited partnership, with its principal place of business located at 7200 Cresheim Road, Philadelphia, PA 19119. Cresheim Valley is the owner of a multi-family residential apartment rental complex, which is located in the City of Philadelphia, and which receives gas services from PGW.

48. Plaintiff Darrah School Realty Co., LP (“Darrah School”) is a Pennsylvania limited partnership, with its principal place of business located at 718 N. 17th Street, Philadelphia, PA 19130. Darrah School is the owner of a multi-family residential apartment rental complex, which is located in the City of Philadelphia, and which receives gas services from PGW.

49. Plaintiff Green Tree Realty Co., LP (“Green Tree”) is a Pennsylvania limited partnership, with its principal place of business located at 330 W. Johnson Street, Philadelphia, PA 19144. Green Tree is the owner of a multi-family residential apartment rental complex, which is located in the City of Philadelphia, and which receives gas services from PGW.

50. Plaintiff Mt. Pleasant Realty Co., LP (“Mt. Pleasant”) is a Pennsylvania limited partnership, with its principal place of business located at 406 W. Mt. Pleasant Avenue, Philadelphia, PA 19119. Mt. Pleasant is the owner of a multi-family residential apartment rental complex, which is located in the City of Philadelphia, and which receives gas services from PGW.

51. Plaintiff SBG Management of Delaware, LP dba Winchester Court Realty Co., LP (“Winchester Court”) is a Delaware limited partnership, authorized to do business in the

Commonwealth of Pennsylvania, with its principal place of business located at 4804 Chester Avenue, Philadelphia, PA 19143. Winchester Court is the owner of a multi-family residential apartment rental complex, which is located in the City of Philadelphia, and which receives gas services from PGW.

52. Plaintiff Squirrel Hill Realty Co., LP (“Squirrel Hill”) is a Pennsylvania limited partnership, with its principal place of business located at 1018 S. 48th Street, Philadelphia, PA 19143. Squirrel Hill is the owner of a multi-family residential apartment rental complex, which is located in the City of Philadelphia, and which receives gas services from PGW.

53. Plaintiff Colonial Garden Realty Co., LP (“Colonial Garden”) is a Pennsylvania limited partnership, with its principal place of business located at 5425-7 Wayne Avenue, Philadelphia, PA 19144. Colonial Garden is the owner of a multi-family residential apartment rental complex, which is located in the City of Philadelphia, and which receives gas services from PGW.

54. Plaintiff Elrae Gardens Realty Co., LP (“Elrae Gardens”) is a Pennsylvania limited partnership, with its principal place of business located at 3610 Spring Garden Street, Philadelphia, PA 19104. Elrae Gardens is the owner of a multi-family residential apartment rental complex, which is located in the City of Philadelphia, and which receives gas services from PGW.

55. Plaintiff Admiral Court Realty Co., LP (“Admiral Court”) is a Pennsylvania limited partnership, with its principal place of business located at 237 S. 48th Street, Philadelphia, PA 19143. Admiral Court is the owner of a multi-family residential apartment rental complex, which is located in the City of Philadelphia, and which receives gas services from PGW.

56. Plaintiff Dorsett Court Realty Co., LP (“Dorsett Court”) is a Pennsylvania limited partnership, with its principal place of business located at 4710 Locust Street, Philadelphia, PA 19143. Dorsett Court is the owner of a multi-family residential apartment rental complex, which is located in the City of Philadelphia, and which receives gas services from PGW.

57. Defendant, City of Philadelphia (“City”), is a municipal subdivision of the Commonwealth of Pennsylvania, and the only city and county “of the first class.” Defendant City is sometimes referred to herein as PGW.

58. Defendant City wholly owns, manages and operates PGW as a municipal utility. PGW is a “city natural gas operation” that provides Plaintiffs and others within the City of Philadelphia with natural gas distribution utility service. *See* 66 Pa. C.S. § 2212.

FACTS

PGW’s Service Contracts, Billing Practices and Use of 18% Tariff Rate on Delinquent Balances Reduced to Municipal Liens

59. Plaintiffs hereby incorporate by reference the averments of Paragraphs 1 through 43 above as fully as though set forth herein at length.

60. Pursuant to the terms and obligations of the PGW Service Contracts, PGW provides natural gas service to all Plaintiffs,

61. Under these Service Contracts, PGW sends each Plaintiff monthly invoices that include penalties, late charges and interest on delinquent balances. *See* Exhibit B.

62. The PGW Service Contracts are oral agreements, but the vital terms of these contracts are evidenced through the parties’ course of dealing and – in part – contained within PGW’s monthly invoices to Plaintiffs. *See* Exhibit B (Sample PGW Invoice at 2 of 4).

63. PGW's monthly invoice expressly sets forth the key terms of its contractual relationship with Plaintiffs.

64. SBG and Plaintiff Property Owners became customers of PGW and entered into separate contractual relationships with PGW when they first purchased their respective properties and solicited PGW to provide natural gas services with respect to those properties.

65. SBG provided property management services to each of the Plaintiff Property Owners; in discharging these duties, SBG entered into its own Service Contract with PGW to provide natural gas services to each of the properties that SBG manages.

66. SBG's Service Contract with PGW obligates it – separate and independently – to pay for the gas services that PGW provides at each of the property locations owned by Plaintiff Property Owners.

67. Notably, PGW addresses to SBG Management each of the invoices issued for natural gas services provided at the property locations owned by Plaintiff Property Owners.

68. Each Plaintiff has entered into a separate Service Contract with PGW, and most of these contractual relationships commenced more than twenty (20) years ago.

69. Plaintiffs do not currently possess all records regarding their contractual relationships with PGW, and thus Plaintiffs are only capable of estimating the exact dates on which their Service Contracts with PGW commenced.

70. Moreover, upon information and belief, PGW never provided Plaintiffs with copies of a comprehensive Service Contract that clearly delineated all terms between the parties in one location.

71. Rather, most – if not all – of the terms for these Service Contracts are established by the conduct between the parties. This is the model under which PGW has chosen to conduct its business operations.

72. Monthly invoices from PGW provide evidence of the nature of Plaintiffs’ routine interactions with PGW.

73. PGW’s attached monthly invoice specifies three distinct categories under the “Terms” heading: (1) “How’s my gas measured?”; (2) “What are my charges?”; and (3) “Other helpful terms[.]”

74. The monthly invoice explains, for example, that PGW calculates customer gas usage in terms of “100 cubic feet of gas” or “CCF” where one CCF “is about the amount of gas used to run an average-sized house heater non-stop for one hour.”

75. The PGW Service Contracts identify the primary components of Plaintiffs’ monthly charges, which includes *how* charge are determined:

What are my charges?

**See the PGW Gas Service tariff on pgworks.com for full details.*

Commodity Charges – The charge for basic gas supply service which is sold either by volume (CCF or MCF) or heating value (DTH). These charges are passed along to customers at the price PGW pays, with no markup.

Customer Charges – A monthly charge to cover NGDC [Natural Gas Distribution Company] costs such as maintaining the lines, meter reading and billing.

Distribution Charges – The charge of delivery of natural gas from the point of receipt by the NGDC to the customer.

Distribution System Improvement Charge (DSIC) – A charge approved by the Pennsylvania Public Utility Commission (PUC) for recovery of the reasonable and prudent costs incurred to repair, improve, or replace eligible distribution

property. A DSIC provides PGW with the resources to accelerate the replacement of aging infrastructure.

Gas Costs Adjustments – Amount billed or credited each month to account for differences between projected and actual gas supply costs of the NGDC.

Weather Normalization Adjustment – An adjustment approved by the PUC as a way to help PGW stabilize its income and operate more efficiently within its budget during the heating season.

Exhibit B (Sample PGW Invoice at 2 of 4).

76. Under the PGW Service Contracts, the monthly charges depend, in part, upon *“the PGW Gas Service tariff [found] on pgworks.com for full details.”* See Exhibit B (Sample PGW Invoice at 2 of 4)

77. PGW Service Contracts include delinquent balances associated with Plaintiffs’ properties. These delinquencies accrue from any amounts unpaid by tenants of Plaintiffs.

78. PGW adds these unpaid amounts to the overall invoices for each Plaintiff without providing a breakdown of the outstanding amounts owed by individual tenants. Under the PGW Service Contracts, SBG and Plaintiff Property Owners are responsible for paying these delinquent balances.

79. Natural gas distribution service furnished by PGW is subject to the authority and control of the Public Utility Commission (“PUC”) with the same force as if the service were rendered by a “public utility” within the meaning of Section 102 of the Public Utility Code, 66 Pa.C.S. §§ 102, 2212.

80. In 1978, the PUC established the maximum legal tariff rate that PGW may charge customers as late fees for delinquent bills at 1.5% per month or 18% simple interest per annum:

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.

52 Pa. Code § 56.22(a). To date, this rate remains in effect, and PGW continues to charge this rate to all gas customers with delinquent gas service bills, including Plaintiffs.

81. When PGW provides gas service to a residential or commercial customer, the amount charged for the gas service becomes a lien on the property serviced. *See* the Lien Law , 53 P.S. § 7106(a)(1).

82. Such a lien, in the majority of cases, is extinguished when the customer pays its PGW bill.

83. If the customer does not pay PGW in full for the gas services used, the lien remains, but it represents an undocketed lien.

84. As part of its business practice, PGW exercised its option to record liens against the properties of customers with delinquent balances, including Plaintiffs' properties herein.

85. Filing with the Prothonotary of the Philadelphia Court of Common Pleas, PGW docketed these delinquent balances as municipal liens on the properties of Plaintiffs. *See* 53 P.S. § 7106(b).

86. Despite docketing the liens, and in direct contravention of 53 P.S. § 7106(b) and its obligations under the PGW Service Contracts, PGW continued to assess its tariff rate of 18% per annum on all Plaintiffs' delinquent amounts docketed as municipal liens.

87. PGW docketed municipal liens on the past due amounts of Plaintiffs with the Court of Common Pleas and continued applying the 1.5% monthly rate (18% per annum) under § 56.22(a) and its approved tariff to accrue additional late charges on those same amounts.

88. PGW's practice of charging the 18% tariff rate on docketed municipal liens violated its PGW Service Contracts with Plaintiffs.

89. PGW Service Contracts incorporated by reference PGW's authority – under certain circumstances – to charge 18% interest on past due amounts under Section 4.2, Finance Charge on Late Payments, of PGW's Gas Service Tariff Rate. *See* Exhibit B (Sample PGW Invoice at 2 of 4, referencing that charges include those approved under PGW's Tariff Rate); Exhibit C (PGW's Gas Service Tariff Rate, at pp. 26, Sect. 4.2).

90. The terms of PGW's Service Contract constrained PGW's use of the 18% tariff rate to those limits imposed by law – including the limits under 53 P.S. § 7106(b), which the Pennsylvania Supreme Court clarified. *See* Exhibit A.

91. As a consequence, PGW breached the terms of its Service Contracts with Plaintiffs when it expressly violated Pennsylvania law by charging 18% interest on delinquent balances docketed as municipal liens.

92. PGW charged Plaintiffs interest and late fees for delinquent balances under the 18% tariff rate for nearly two decades. When Plaintiffs made payments to PGW, the payments were applied almost entirely to paying the interest and late fees – not the principal amount. This practice, thus, caused the amount of the delinquencies subject to the 18% tariff rate to grow exponentially.

93. Under the Public Utility Code, PGW's customers may seek redress for service and billing issues by filing a formal complaint with the PUC. *See* 66 Pa.C.S. § 1410.

94. In 2015, Plaintiffs filed formal complaints relating to the municipal liens docketed by PGW for past due bills for utility service, claiming that PGW improperly included amounts subject to docketed municipal liens in its calculation of late payment charges subject to PGW's tariff rate of 18%.

95. These Plaintiffs argued that the amounts docketed as municipal liens were subject to the statutory post-judgment interest rate of 6%, not the 18% tariff rate that PGW assessed. *See* 42 Pa.C.S. § 8101; 41 P.S. § 202.

96. On December 8, 2016, the PUC ruled in favor of the customers' challenge. The PUC determined, once PGW docketed a municipal lien on past due amounts with the Court of Common Pleas, PGW cannot continue applying the 1.5% monthly rate under § 56.22(a) and its approved tariff to accrue additional late charges on those same amounts.

97. "PGW's inclusion of amounts which are the subject of a municipal lien," the PUC explained, "are improperly incorporated as billing determinants in the calculation of just and reasonable late payment charges (rates) under PGW's tariff." *See* PUC Order, 12/8/2016.

98. On appeal, however, the Pennsylvania Commonwealth Court reversed the PUC's decision. The Court's holding explicitly permitted PGW to docket delinquent amounts as municipal lien, while continuing to accrue late charges on those same amounts under the 18% tariff rate.

99. The Pennsylvania Supreme Court granted a Petition for Allocatur to review the Commonwealth Court's decision.

Pennsylvania Supreme Court Decision:
PGW Not Permitted under MCTLL to Use 18% Tariff Rate
in Assessing Late Charges for Delinquent Amounts Docketed as Municipal Liens

100. After briefing and argument, the Pennsylvania Supreme Court ruled that PGW's practice of assessing interest and late charges under the 18% tariff rate violated Section 7106(b) of the MCTLL. *See* Exhibit A, *PGW v. PUC*, 249 A.3d at 973-4. (citing 53 P.S. § 7106(b)).

101. “[C]onclud[ing] that the terms of Section 7106(b) are clear and unambiguous[.]” the Supreme Court reasoned that the General Assembly intended “these docketed municipal liens be treated as the equivalent of a final resolution of a claim between parties” when it included language requiring such municipal liens “be given the effect of a judgment[.]” *Id.* at 974 (quoting 53 P.S. § 7106(b)).

102. Because the MCTLL requires that municipal liens be treated as the equivalent of a final judgment, the Supreme Court concluded that the statute prohibited PGW from assessing late charges and interest at the tariff rate of 18% per annum. *Id.*

103. Rather, Pennsylvania statutory law requires that any “judgment for a specific sum of money shall bear interest at the lawful rate from the date of the verdict or award, or from the date of the judgment, if the judgment is not entered upon a verdict or award[.]’ unless otherwise provided by another statute.” *Id.* at 973 (quoting 42 Pa. C.S. § 8101).

104. The Court specified, “[t]he ‘lawful rate’ of post-judgment interest is 6% per annum[.]” and no statute provides another rate applicable to the municipal liens in question. *Id.* (quoting 41 P.S. § 202).

105. “[B]ecause a lien docketed per Section 7106(b) must be given the effect of a judgment,” the Supreme Court ruled, “it follows that the post-judgment statutory rate of interest applies to the amount of the lien.” *Id.* at 973-4.

106. . On remand in a memorandum decision dated March 16, 2022, the Commonwealth Court “conclude[d] that [the Pennsylvania] Supreme Court’s decision in PGW II

[the decision of April 29, 2021] *applies retroactively only as to parties to this litigation and to other proceedings pending at the time the PGW II decision was issued in April 2021.*” See *PGW v. PUC*, 1291 C.D. 2018, at *29 (Pa. Cmwlth. March 16, 2022) (emphasis added).

107. This ruling conclusively decides the issue of retroactive application of the Supreme Court’s decision.

108. Plaintiffs to this litigation were parties to separate parallel proceedings before the PUC stayed pending the ultimate outcome of the appeals to the Commonwealth Court and Supreme Court.

109. The Supreme Court’s holding in April 2021 applies retroactively to Plaintiffs named in this litigation.

COUNT I: BREACH OF CONTRACT

PLAINTIFFS v. CITY OF PHILADELPHIA/PGW

110. Plaintiffs hereby incorporate by reference the averments of Paragraphs 1 through 109 above as fully as though set forth herein at length.

111. As set forth previously, Plaintiffs entered into oral Service Contracts with PGW (and/or the City) where PGW agreed to provide gas services in regard to Plaintiffs’ properties in exchange for payment – the terms of which were ratified by the parties’ conduct, course of dealing, and various documents, including billing invoices, account statements, rate determinations and the like. See Exhibit B (Sample PGW Invoice); Exhibit C (PGW’s Gas Service Tariff Rate).

112. Pursuant to the terms of their Service Contracts with PGW (and/or the City), Plaintiffs were required to pay PGW (and/or the City) certain fees for the gas services it performed.

113. As specified by invoices provided to Plaintiffs, PGW (and/or the City) is entitled to charge Plaintiffs interest and late fees for delinquent or late payments.

114. PGW Service Contracts incorporated by reference PGW's (and/or the City's) authority – under certain circumstances – to charge 18% interest on past due amounts under Section 4.2, Finance Charge on Late Payments, of PGW's Gas Service Tariff Rate. *See* Exhibit B (Sample PGW Invoice at 2 of 4, referencing that charges include those approved under PGW's Tariff Rate); Exhibit C (PGW's Gas Service Tariff Rate, at pp. 26, Sect. 4.2).

115. PGW (and/or the City) lacked authority to charge 18% interest against Plaintiffs for delinquencies docketed as municipal liens. Neither (i) PGW's approved tariff rate *nor* (ii) PGW's Service Contracts with Plaintiffs provided PGW with the necessary authority.

116. Nevertheless, for almost two decades, PGW (and/or the City) has improperly overcharged Plaintiffs for interest and late charges on delinquent amounts, assessing those amounts at the 18% tariff rate.

117. PGW (and/or the City) has breached its Service Contracts with Plaintiffs by overcharging Plaintiffs on delinquent amounts docketed as municipal liens at the 18% tariff rather than the required 6% statutory rate.

118. Plaintiffs have incurred hundreds of million of dollars in damages from the improper billing practices of PGW (and/or the City), which collected and overcharged Plaintiffs for late fees, costs and interest by wrongly applying the 18% tariff rate to delinquent amounts docketed as municipal liens.

119. As a direct and proximate cause of PGW's (and/or the City's) breach, Plaintiffs have suffered damages in an amount in excess of \$10,245,000.00, exclusive of interest, attorneys' fees, and costs.

120. To the extent possible in light of PGW's (and/or the City's) breach, Plaintiffs have fully performed all of their obligations under the terms of the agreements.

121. Plaintiffs are entitled to recoup the amounts which they paid under the improper billing practices of the City and PGW, and which caused PGW to breach their Service Contracts, in an amount in excess of Ten Million Two Hundred Forty-Five Thousand Dollars (\$10,245,000.00).

WHEREFORE, Plaintiffs demands the entry of judgment in their favor and against PGW and/or the City of Philadelphia, jointly and severally, in an amount of Ten Million Two Hundred Forty-Five Thousand Dollars (\$10,245,000.00), plus interest, costs, and any and all additional relief as may be deemed appropriate by the Court.

COUNT II: UNJUST ENRICHMENT

PLAINTIFFS v. CITY OF PHILADELPHIA/PGW

122. Plaintiffs hereby incorporate by reference the averments of Paragraphs 1 through 121 above as fully as though set forth herein at length.

123. Plaintiffs plead this cause of action in the alternative to the contract claim under Count I.

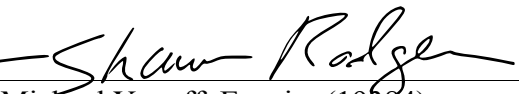
124. As a result of the improper billing practices referenced above, and the Pennsylvania Supreme Court's Opinion referenced above and attached as Exhibit "A,"

Defendant has been unjustly enriched by collecting the improper amounts from the Plaintiffs in the amount of Ten Million Two Hundred Forty-Five Thousand Dollars (\$10,245,000.00).

WHEREFORE, Plaintiffs demand judgment in the amount of Ten Million Two Hundred Forty-Five Thousand Dollars (\$10,245,000.00) together with interest and costs thereon.

Respectfully submitted,

GOLDSTEIN LAW PARTNERS, LLC

By: 

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JURY DEMAND

Plaintiffs demand a jury trial on all counts contained in the Amended Complaint.

GOLDSTEIN LAW PARTNERS, LLC

By: /s/

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that this date I served a copy of the foregoing Letter upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

VIA EMAIL

Shawn M. Rodgers, Esquire
Patricia M. Starner, Esquire
Michael Yanoff, Esquire
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Dated: August 12, 2022



Daniel Clearfield, Esq.

Counsel for Philadelphia Gas Works