



GOLDSTEIN
LAW
PARTNERS

January 10, 2023

Hon. Eranda Vero, ALJ
Pennsylvania Public Utility Commission
801 Market Street, Suite 4603
Philadelphia, PA 19107

BY E-FILE and E-MAIL (evero@pa.gov)

RE: *SBG Management Services, Inc. et al v PGW; Docket Nos. C-2012-2304183; C- 2012-2304324; C-2015-2486618; C-2015-2486642; C-2015-2486648; C-2015- 2486655; C-2015-2486664; C-2015-2486670; C-2015-2486674; and C-2015-2486677*

Dear Judge Vero:

This office represents Complainants, SBG Management Services, Inc. and the various other entities involved in the above docketed matters (collectively, "SBG"). On December 28, 2022, Philadelphia Gas Works ("PGW") submitted a Motion in Limine that seeks to preclude SBG from presenting expert and lay testimony in regard to "lost income / excess costs" and "damages caused by the improper calculations and billings made by PGW." See PGW's Motion, 12/28/22, at 3-4. PGW claims (a) that SBG's 2012 and 2015 complaints do not plead such damages, and (b) that consideration of these cited consequential damages would be outside the scope of the Commission's jurisdiction and the Commonwealth's remand order. *Id.* at 6-7.

PGW specifies that only two issues are before the Commission: (1) determining the amount to which SBG Complainants are entitled as a result of PGW's incorrect application of the Commission's partial payment rules; and (2) determining the refund amounts that PGW owes SBG Complainants for years of erroneously applying the eighteen percent (18%) tariff rate to outstanding balances docketed as municipal liens. See *id.* at 3-7. It contends - incorrectly - that SBG seeks to expand the scope of these proceedings improperly. This is not the case. SBG acknowledges that these are only two questions to be answered at the evidentiary hearing, now scheduled for February 21-22, 2023.

Although SBG does not necessarily agree with PGW's description as to the nature and scope of the two issues currently pending before the Commission, it recognizes that Section 1312(a) of the Code defines the parameters of the refund proceeding. In particular, when determining the amount PGW owes Complainants for its erroneous application of the eighteen percent (18%) tariff rate over the course of many years – as specified by the Supreme Court's decision in *PGW II* – § 1312(a) provides as follows:

...the commission shall have the power and authority to make an order requiring the public utility **to refund the amount of any excess paid by any patron, in consequence of such unlawful collection, within four years prior to the date of the filing of the complaint, together with interest at the legal rate from the date of each such excessive payment.**

66 Pa. C.S.A. § 1312(a). Accordingly, under the second issue identified by PGW in its motion – determining the refund amounts owed by PGW – the Commission shall assess the exact amount of the overcharges (a) looking back “four years prior to the date of the filing of [each SBG] complaint” in 2012 and 2015, and (b) adding “interest at the legal rate from the date of each such excessive payment.” *Id.*

SBG's expert report will, therefore, only include and discuss the refund amounts as permitted under § 1312(a) of the Code. SBG's expert analysis will not include any discussion of “lost income / excess costs” and “damages caused by the improper calculations and billings made by PGW.” SBG reserves the right to pursue those consequential damages – which are related to the refund amounts – in the appropriate forum and after this Commission determines the total refund amount PGW must remit to SBG.

Thank you for your consideration of this issue. If Your Honor requires a further response, Complainants are prepared to offer a more comprehensive briefing. Complainants elected to submit this letter response in lieu of such a brief because, as it appears, the parties do not disagree as to whether consequential damages are justiciable before the Commission in the pending matter.

Respectfully submitted,

/s/ Shawn M. Rodgers
Shawn M. Rodgers



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cc: Client

Patty Starner, Esquire
Michael Yanoff, Esquire
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CERTIFICATE OF SERVICE

I hereby certify that this date I served a copy of SBG's Letter Response to PGW's Motion in Limine and Request for Expedited Response, upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

VIA EMAIL

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