

February 20 PM 3:38

OPFLD-Sbg Management Services, Inc Etal Vs Philadelphia



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Abbe F. Fletman, J.

After the parties agreed to interim relief, including monthly payments to PGW and restoring and maintaining gas service, the Court entered an order memorializing that agreement. The parties then unsuccessfully attempted mediation and again appeared before the Court for a conference on February 27, 2024. On March 1, 2024, the Court entered an order (the “March 1 Order”) scheduling the injunction petition for briefing and a hearing and maintaining the status

quo of uninterrupted gas service to the building residents. It is that order PGW now appeals, arguing that this Court lacked subject matter jurisdiction to enter the order and improperly entered a special injunction.

For the reasons discussed below, the Court requests that the Commonwealth Court affirm its order.

I. The Parties' Longstanding Dispute.

This dispute among plaintiffs SBG Management Services, Inc., Marchwood Realty Co., L.P., Fern Rock Realty Co, L.P., Marshall Square Realty Co., L.P., Oak Lane Realty Co., L.P., Simon Garden Realty Co., L.P. (collectively, "SBG") and PGW has a 23-year-long, tortuous history, much of which has been litigated before the Pennsylvania Public Utility Commission (the "PUC") and the appellate courts.¹ In addition to this injunction action, which was recently filed

¹ See *Phila. Gas Works v. Pa. Pub. Utility Comm'n*, 249 A.3d 963, 974, *reargument granted in part and case remanded*, 256 A.3d 1092 (Pa. 2021) ("PGW II") (The Pennsylvania Supreme Court held in favor of SBG, determining that "the General Assembly intended docketed municipal liens in [Philadelphia] to be treated in the same manner as a judgment that has been rendered following an adjudicative process. As a result, only the statutory post-judgment interest rate of 6 percent per annum applies, not the tariff rate" of 18 percent); *Phila. Gas Works v. Pa. Pub. Utility Comm'n*, 276 A.3d 1219 (Pa. Commw. 2022) ("Upon review [of the Supreme Court's decision, the Commonwealth Court held] that (1) our Supreme Court's decision in PGW II 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; (2) as agreed by the parties, a remand is necessary for presentation of evidence and a determination by the [PUC] concerning the correct amounts of any refunds owed by [PGW]; (3) based on due process principles, the [PUC] acted arbitrarily and capriciously and abused its discretion by imposing a \$25,000 monetary sanction against PGW for past violations of the statute governing municipal liens, where the [PUC's] decision applying the statute fundamentally altered longstanding practice regarding PGW's docketing of municipal liens arising from unpaid gas bills; (4) the [PUC's] mandated changes to PGW's payment crediting system were not arbitrary or capricious and did not constitute an abuse of discretion; (5) PGW's challenge to the timetable for compliance with the [PUC's] order regarding billing changes has become moot due to the passage of time, and PGW is not entitled to a further extension of time to comply with the [PUC's] order; and (6) the [PUC] did not err in imposing a \$2,000 penalty against PGW for violating the [PUC's] regulation governing the application of partial payments.") The proceedings on remand to the PUC are still active, and the PUC has not yet determined the amount of refund due from PGW to SBG.

before this Court, another related action was previously filed and is still pending before this Court: *SBG Management Services, Inc. v. City of Philadelphia c/o Philadelphia Gas Works*, April Term 2021, No. 02801 (the “First Action.”) In the First Action, SBG asserts claims against PGW for breach of contract and unjust enrichment. *See* First Action Dkt. at May 16, 2022, Third Amended Complaint (“TAC”). Specifically, SBG alleges that

[f]or decades, pursuant to the terms and obligations set forth in the PGW Service Contracts with [SBG], 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 [SBG] 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.

Id., TAC, Introduction, p. 2. SBG further alleges that, as a result of PGW’s misconduct, it suffered more than \$10 million in damages.² *See id.*, TAC, ¶ 124.

While the First Action was pending, in the fall of 2023, PGW terminated the gas service at all five of SBG’s properties due to its non-payment of recent monthly service fees. *See* November 17, 2023, Hrg. Tr., p. 5, line 5 through p. 9, line 2.³ Hundreds of lower-income tenants, who pay

² SBG is currently claiming only \$2 million in damages. *See* November 17, 2023, Hrg. Tr., p. 45, line 14; Dkt. at February 5, 2024, Second Amended Complaint (“SAC”), ¶ 38.

³ “On September 29, 2023, PGW issued shut-off notices to [SBG], advising them that, as of November 2023, PGW intended to terminate gas service at the Properties. The shut-off notices received from PGW reflect only arrearages for \$772.89 and for \$18,233.68 regarding the Wissahickon Avenue Property, \$147.16, \$2,894.16, [and] \$2,750.07 regarding the Godfrey Avenue Property, \$2,481.69 and \$3,350.01 regarding the N 6th Street Property, \$3,148.37 and \$3,406.53 regarding the Cheltenham Avenue Property, and \$1,617.18 [and] \$9,195.32 regarding the Musgrave Street Property, which purportedly accounts for the 5-month period between April 2023 and August 2023.” SAC, ¶¶ 36-37.

SBG for gas service, live at these properties. *See*, Dkt. at February 5, 2024, SAC, ¶ 53;⁴ November 17, 2023, Hrg. Tr., p. 15, line 22 through p. 16, line 4, p. 19, lines 3-4. As a result, SBG filed this action (the “Injunction Action”) in which it asserts claims for:

COUNT I: SELECTIVE ENFORCEMENT - Violation of Article I, Sections 1, 20 and 26 of the Pennsylvania Constitution.

COUNT II: SELECTIVE ENFORCEMENT: 42 U.S.C. § 1983 - Violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

COUNT III: EQUITY - Injunctive Relief to Prohibit [PGW] from Terminating Gas Service.

See Injunction Action Dkt. at February 5, 2024, SAC. In support of those claims, SBG alleges that “PGW has chosen to selectively enforce the shut-off Notices against [SBG] for continuing to dispute PGW’s bills and challenge PGW’s unlawful billing practices[, as well as] discriminat[ed] based upon income status and [SBG’s] continuing litigation against PGW.” *Id.*, SAC, ¶¶ 66, 76.

Immediately after initiating this Injunction Action on November 15, 2023, SBG filed the Petition for Preliminary Injunction that underlies this appeal. This Court promptly scheduled a hearing on the petition on November 17, 2023. Before the hearing date, SBG paid all the alleged past-due gas service fees. *See* November 17, 2023, Hrg. Tr., p. 7, line 5 through p. 8, line 3. As a result, PGW restored service to at least one of SBG’s buildings before the hearing and pledged to restore service at the other four buildings by noon on November 18, 2023. *See id.*, p. 8, lines 6-13; p. 13, lines 7-11; p. 17, lines 13-18; p. 67, line 20 through p. 68, line 1.

After the November 17 hearing, this Court entered a special injunction order memorializing the parties’ agreement made in court, on the record (the

⁴ SBG alleges in the operative verified complaint that their tenants “are low income, affordable and work-force housing residents that depend on gas service for heat and cooking.” SAC, ¶ 53.

“November 17 Order”). *See id.*, p. 60, line 9 through p. 69, line 19. That November 17 Order required PGW to “complete the restoration of gas service to the five properties that are the subject of [SBG’s] petition.” Injunction Action Dkt. at November 17, 2023, Order, ¶ 1. The Court also directed the parties to select mediators since they both had expressed interest in mediating this longstanding dispute. *Id.*, ¶ 3. In addition, SBG agreed to pay an estimated monthly amount of \$15,000 going forward. *See* November 17, 2023, Hrg. Tr., p. 60, lines 12-15.⁵ PGW took no appeal from this initial special injunction order.

On February 27, 2024, this Court held a conference with counsel to determine the status of mediation efforts and, if necessary, to schedule a hearing on the pending Petition for Preliminary Injunction. Since their mediation efforts appeared to be proceeding rather slowly, the Court entered the March 1 Order setting a briefing and hearing schedule on the Petition for Preliminary Injunction. The Court advised the parties on the record that it was “going to extend this injunction so PGW will not do anything to cut this gas off. . . .” February 27, 2024, Hrg. Tr., p. 22, line 23-25; *see also id.*, p. 21, line 24 – p. 22, line 1. PGW only raised a concern about extending the injunction if it received no interim payments. *Id.*, p. 23, lines 3-5. The Court then instructed the parties to reach an interim payment agreement. *Id.*, p. 23, lines 6-8. The parties presented their agreement to the Court by stipulation, which the Court approved and pursuant to which SBG agreed to continue paying PGW \$15,000 per month through July 15, 2024, while the mediation efforts and injunction proceedings continued. *See* Injunction Action Dkt., March 1, 2023, Stipulation and Order, ¶ 1. The Court included in its March 1 Order an extension of the special injunction, prohibiting PGW from terminating gas service to the five properties without leave of

⁵ This amount is more than the monthly amount budgeted by PGW for the properties, which is \$11,740. *See* November 17, 2023, Hrg. Tr., p. 40, line 19 through p. 41, line 6.

Court. *See id.*, March 1 Order, ¶1. PGW voiced no objection to the continuation of the injunction during the February 27 conference.

On March 28, 2024, PGW filed a notice of appeal of the March 1 Order. *See* Injunction Action Dkt, March 28, 2024, Notice of Appeal. On April 22, 2024, it filed its 1925(b) Statement of Errors Complained of on Appeal from the March 1 Order. *See id.*, April 22, 2024, 1925(b) Statement. PGW argues that the Court lacked subject matter jurisdiction to enter the March 1 Order because the issues decided are within the exclusive or primary jurisdiction of the PUC and that the Court improperly enjoined PGW from terminating gas service to building residents. *Id.*, p. 2.

After filing the notice of appeal, PGW filed an emergency motion to stay this action pending appeal, which the Court granted on April 9, 2024. *See id.*, at April 9, 2024, Order. The stay requested by PGW had the effect of continuing the special injunction pending determination of the appeal.

II. This Court Has Jurisdiction to Issue an Injunction Preventing Termination of Gas Services.

In its 1925(b) Statement, PGW alleges that this Court lacks subject matter jurisdiction to enter such a temporary stay order as well as to entertain the Petition for Preliminary Injunction. PGW argues that “all of [SBG’s] allegations against PGW – including [SBG’s] allegations regarding the termination of service – were within the exclusive or primary jurisdiction of the Public Utility Commission.” Injunction Action Dkt. at April 22, 2024, 1925(b) Statement, ¶ 1. PGW raised the issue of this Court’s subject matter jurisdiction in a contested motion to transfer

and in preliminary objections, but this Court lacked any opportunity to rule on the issue because of the stay requested by PGW and granted by the Court.⁶

Generally, courts should not adjudicate matters that are within the primary or exclusive jurisdiction of an agency such as the PUC. See *Borough of Lansdale v. Philadelphia Elec. Co.*, 170 A.2d 565, 566–67 (Pa. 1961) (“Although we still possess the right of judicial scrutiny over the acts of the PUC, no principle has become more firmly established in Pennsylvania law than that the courts will not originally adjudicate matters within the jurisdiction of the PUC.”) The PUC’s jurisdiction involves “rates, service, rules of service, extension and expansion, hazard to public safety due to use of utility facilities, installation of utility facilities, location of utility facilities, obtaining, alerting, dissolving, abandoning, selling or transferring any right, power, privilege, service, franchise or property and rights to serve particular territory.” *Id.*, 170 A.2d at 567. Courts, however, “should not be too hasty in referring a matter to an agency, or to develop a ‘dependence’ on the agencies whenever a controversy remotely involves some issue falling arguably within the domain of the agency’s ‘expertise.’” *Drafto Corp. v. Nat’l Fuel Gas Distribution Corp.*, 806 A.2d 9, 13 (Pa. Super. 2002). “Where . . . the matter is not one peculiarly within the agency’s area of expertise, but is one which the courts or jury are equally well-suited to determine, the court must not abdicate its responsibility. In such cases, it would be wasteful to employ the bifurcated procedure of referral, as no appreciable benefits would be forthcoming.” *Id.*

⁶ See Injunction Action Dkt., January 25, 2024, PGW’s Motion to Transfer; *id.* at February 14, 2024, SBG’s Answer to Motion; *id.* at February 16, 2024, Motion to Transfer assigned; *id.* at February 26, 2024, Preliminary Objections filed; *id.* at March 18, 2024, Answer to Preliminary Objections filed; *id.* at March 20, 2024, Preliminary Objections assigned; *id.* at March 28, 2024, PGW’s Notice of Appeal; *id.* at April 4, 2024, PGW’s emergency Motion to Stay; *id.* at April 9, 2024, Order granting Motion to Stay.

The most analogous case comes from our Superior Court in *Drafto*, in which a natural gas customer sought an injunction to prevent a gas company from terminating service. *Id.* The trial court sustained preliminary objections based on subject matter jurisdiction. The Superior Court reversed, holding that the challenge to the gas company's termination of service "does not raise a complex issue that requires deferment to the PUC." *Id.* at 15. The *Drafto* court explained:

Drafto makes no challenge to any PUC rule or regulation, nor does it seek to provide a remedy the courts cannot give. In the present case, the trial court was asked by Drafto to issue an injunction to prevent NFGD [the gas company] from discontinuing Drafto's gas service. Drafto argued that the discontinuation of its gas service would ruin its business and that the injunction was proper to issue because Drafto had other equitable defenses to paying the amount billed by NFGD The core issue presented to the trial court was, in essence, a collection matter. This type of determination does not require the special expertise of the PUC, for it is well within the purview of the courts to issue injunctions and entertain challenges to contractual obligations.

Id.

In this case, SBG is "not disputing the amount of the charges PGW assessed against [it] in this Court Rather, [SBG] dispute[s] the issuance of shut-off notices and request[s] equitable relief before this Court that would not be available in any appropriate time frame before the PUC." Injunction Action Dkt., February 5, 2024, SAC, ¶ 48.

Even if the PUC's exclusive jurisdiction were implicated by the claims in this case, SBG is correct that this Court is a more appropriate forum than the PUC in which to ask for preliminary injunctive relief. As the Commonwealth Court has observed, "the [PUC's] powers and duties do not abridge or alter the existing rights of action or remedies in equity or under common or statutory law of this Commonwealth. In addition, our courts have construed the Public Utility Code as creating many areas of concurrent jurisdiction between the PUC and the Commonwealth's courts." *Virgilli v. Southwestern Pennsylvania Water Authority*, 427 A.2d 1251, 1253 (Pa. Commw. 1981).

In this case, SBG's claims do not implicate the PUC's primary or exclusive jurisdiction. The SAC and the Petition for Preliminary Injunction in this action do not allege any matters concerning reasonableness, adequacy, or sufficiency of PGW's service, facilities, or rates, so they do not speak to the PUC's areas of expertise. Instead, SBG is simply asking this Court to maintain the status quo of providing gas service to its tenants while the parties' rate dispute is adjudicated by the PUC and SBG's damages action is litigated before this court in the First Action.

III. The March 1 Order Satisfies the Requirements For Issuance of a Special Injunction.

On appeal, PGW argues that the March 1 Order improperly continued and expanded this Court's initial grant of injunctive relief in the November 17 Order. *See* Injunction Action Dkt. at April 22, 2024, 1925(b) Statement, ¶ 2. To the contrary, the Court properly extended the special injunction it granted upon consent of the parties and indeed entered the March 1 Order with the parties' consent.

A court may grant a special or preliminary injunction⁷ when the moving party establishes the following elements:

(1) the injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages; (2) greater injury would result from refusing an injunction than from granting it, and, concomitantly, the issuance of an injunction will not substantially harm other interested parties in the proceedings; (3) the injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct; (4) the party seeking the injunction is likely to prevail on the merits; (5) the injunction is reasonably suited to abate the offending activity; and (6) the injunction will not adversely affect the public interest. . . . [A] preliminary injunction is intended to preserve the status quo and prevent imminent and irreparable harm that might occur before the merits of the case can be heard and determined.

⁷ Courts apply the same criteria to a petition for a special injunction as they do to a petition for a preliminary injunction. *See* 5 Goodrich-Amram 2d § 1531(a):1.

Lindeman v. Borough of Meyersdale, 131 A.3d 145, 151 (Pa. Commw. 2015).

The first, second, and third elements are established by the fact that SBG's lower income tenants would suffer immediate and irreparable injury by being unable to heat and cook in their homes despite having paid for the gas service.⁸ Money damages are insufficient to recompense the tenants for rendering their homes uninhabitable. Continuing the injunction does not harm PGW in any way because, in the interim, it is receiving payments higher than the budgeted amounts for the properties. See November 17, 2023, Hrg. Tr., p. 40, line 19 through p. 41, line 6. In addition, the injunction restores the parties to the status quo before PGW wrongfully terminated the residents' gas service.

As to likelihood of success on the merits, the Commonwealth Court has "note[d] that the 'clear right to relief' element does not impose upon the proponent of the preliminary injunction the burden of establishing an absolute right to relief on the underlying claim." *T.W. Phillips Gas & Oil Co. v. Peoples Nat. Gas Co.*, 492 A.2d 776, 780 (Pa. Commw. 1985). "Where the threat of immediate and irreparable harm to the petitioning party is evident, that the injunction does no more than restore the status quo and the greater injury would result by refusing the requested injunction than granting it, an injunction may properly be granted where substantial legal questions must be resolved to determine the rights of the respective parties." *Id.*

⁸ SBG states in its verified complaint that "[t]erminating gas services to the Properties will leave residents without a means (i) to heat their apartments in November and December; (ii) to cook their meals; or (iii) to use hot water. PGW's tactic will effectively render the Properties uninhabitable and either force [SBG] to pay the amount in dispute – even though PGW made no efforts to fix the meters located on the properties – or shutdown [SBG's] businesses. At least one resident of Marchwood requires gas service for medical reasons, as she is currently battling cancer. Numerous residents have other medical conditions, as well as school-age children affected by the shut-off." Injunction Action Dkt. at February 5, 2024, SAC, ¶¶ 129-130. In addition, PGW admits that the residents of the SBG buildings have paid for gas service. November 17, 2023, Hrg. Tr., p. 15, line 22 – p.16, line 3.

Substantial legal questions abound in this case. Based on the limited record before this Court at this early stage in the proceedings, it appears that, in light of the decades-long dispute between the parties, PGW might have improperly singled out, and retaliated against, SBG by terminating services for nonpayment of five months of gas charges, despite PGW's knowledge that SBG has a pending claim against PGW for repayment of substantial amounts of allegedly overpaid penalties. SBG's asserted claims of alleged improper retaliation and discrimination are important enough to warrant maintaining the status quo pending a hearing on the Petition for Preliminary Injunction. This is particularly true where innocent third parties – the tenants of the SBG buildings – are the ones who will suffer if PGW again cuts off gas service.

The fifth and sixth requirements for issuance of an injunction are satisfied by the fact that PGW is required to maintain gas service only until the Petition for Preliminary Injunction is adjudicated and the March 1 Order explicitly allows PGW to petition the Court for leave to terminate gas service if warranted. *See* Injunction Action Dkt, March 1 Order, ¶ 1. In addition, failing to continue the injunction would adversely affect the public interest because hundreds of lower income residents could lose their gas service at any time.

The March 1 Order also is proper because it was entered with the consent of the parties. At the February 27 hearing, PGW only objected to continuing to enjoin it from turning off gas service to the buildings if there was no agreement for interim payments. *See* February 27, 2024, Hrg. Tr., p. 22, line 23 – p. 23, line 5.⁹ The Court responded that the parties should reach an

⁹ The Court stated, "I am going to extend this injunction so PGW will not do anything to cut this gas off, and if you can't make an agreement with opposing counsel on payments, it's on you." PGW's counsel responded, "So if I understand Your Honor, the order Your Honor is contemplating will allow SBG to use gas without payment until –" The Court took a recess to allow the parties to negotiate an agreement on interim payments. *See* February 27, 2024, Hrg. Tr., p. 29, line 17 through p. 30, line 18.

agreement on interim payments, which they did, and which was documented in the Stipulation and Order of March 1. At no time during the hearing did counsel to PGW object to the continuation of the special injunction pending a hearing on the preliminary injunction until it filed its notice of appeal of the March 1 Order.

CONCLUSION

For all the foregoing reasons, the Court respectfully requests that the Commonwealth Court affirm its order of March 1, 2024.

Dated: May 28, 2024

BY THE COURT:

ABBE F. FLETMAN
ABBE F. FLETMAN, J.

After the recess, counsel for SBG reported that the parties had reached an agreement. *See id.* at p. 33, line 20 through p. 34, line 14. After it was put on the record, the Court asked counsel for PGW, “[D]o you agree that that’s the agreement?” He responded, “Yes, we do, Your Honor. We would like this memorialized in an order.” *Id.* at p. 34, lines 20-23. The Stipulation and Order of March 1 memorialized that agreement.

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NOV 17 2023

ROOM 521 IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION - CIVIL

SBG MANAGEMENT SERVICES, INC, : NOVEMBER TERM, 2023
MARCHWOOD REALTY CO., L.P., :
FERN ROCK REALTY CO. L.P., : NO. 01740
MARSHALL SQUARE REALTY CO., :
L.P., OAK LANE REALTY CO., L.P., and : COMMERCE PROGRAM
SIMON GARDEN REALTY CO., L.P., :
Control No. 23113811

Plaintiffs,

v.

PHILADELPHIA GAS WORKS,
CITY OF PHILADELPHIA, and SETH A.
SHAPIRO in his official capacity as the
President and CEO of PGW,

Defendants.

DOCKETED

NOV 17 2023

R. POSTELL
COMMERCE PROGRAM

ORDER

AND NOW, this 17th day of November 2023, upon consideration of the verified complaint in this matter and the Petition for Temporary Preliminary Injunction, and after an initial hearing in this matter, it is **ORDERED** as follows:

1. A special injunction is **GRANTED** and defendant, the Philadelphia Gas Works, must complete the restoration of gas service to the five properties that are the subject of plaintiff's Petition on or before 12:00 p.m. on November 18, 2023;
2. Plaintiffs shall post a bond of \$5,000 with the Office of Judicial Records on or before 5:00 p.m. on November 17, 2023;
3. Plaintiffs and defendants shall each select three mediators, exchange lists and make best efforts to agree on a mediator. By 5 p.m. on Tuesday, November 21, 2023, the parties shall advise the Court of their selection or, if they cannot reach agreement, they shall

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each send their list to fletman.virtualcourtroom@courts.phila.gov and
susan.packer@courts.phila.gov;

4. The remainder of the petition is held for further briefing and hearing upon further order;
and
5. The parties shall appear for a status conference on February 27, 2024 at 10:00 a.m. in
Courtroom 630, City Hall.

BY THE COURT:



ABBE F. FLETMAN, J.

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FEB 9 2024
ROOM 521

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

SBG MANAGEMENT SERVICES, INC, : NOVEMBER TERM, 2023
MARCHWOOD REALTY CO., L.P., :
FERN ROCK REALTY CO. L.P., : NO. 01740
MARSHALL SQUARE REALTY CO., :
L.P., OAK LANE REALTY CO., L.P., and : COMMERCE PROGRAM
SIMON GARDEN REALTY CO., L.P., :
Control No. 23113811
Plaintiffs, :

v. :

PHILADELPHIA GAS WORKS, :
CITY OF PHILADELPHIA, and SETH A. :
SHAPIRO in his official capacity as the :
President and CEO of PGW, :

Defendants. :

DOCKETED

MAR - 1 2024

R. POSTELL
COMMERCE PROGRAM

ORDER

AND NOW, this 29th day of February 2024, upon consideration of plaintiffs' Petition for Preliminary Injunction, and after a status conference in this case on February 27, 2024, it is ORDERED that:

1. Defendants shall not terminate the gas service to the five properties that are the subject of the Petition without leave of Court;
2. The parties shall use their best efforts to mediate their dispute during the month of April 2024;
3. Defendants shall file their response(s) to the Petition on or before April 12, 2024;
4. Plaintiffs shall file their reply(ies) to the Petition on or before April 26, 2024;

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5. On or before May 10, 2024, the parties shall exchange and email to the Court¹ copies of their exhibits to be offered, and lists of their witnesses to be called, at a hearing on the Petition; and
6. Counsel, the parties, and their witnesses shall appear for a hearing on the Petition at 10:00 a.m. on May 20 and 21, 2024, in Courtroom 630, City Hall, Philadelphia, Pennsylvania.

BY THE COURT:



ABBE F. FLETMAN, J.

¹ Copies of exhibits and the lists of witnesses should be emailed to the court at:
fletman.virtualcourtroom@courts.phila.gov

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FEB 23 2024

ROOM 521

SBG MANAGEMENT SERVICES, INC, et al.,

Plaintiffs,

v.

PHILADELPHIA GAS WORKS, et al.,

Defendant

Filed and Attested by the
Clerk of the Court
PHILADELPHIA
FEB 23 2024 05:41 pm

COMMERCE PROGRAM

NOVEMBER TERM 2023

NO. 01740

DOCKETED

MAR - 1 2024

R. POSTELL
COMMERCE PROGRAM

STIPULATION AND ORDER

Plaintiffs/petitioners SBG Management Services, Inc., Marchwood Realty Co., L.P., Fern Rock Realty Co. L.P., Marshall Square Realty Co., L.P., Oak Lane Realty Co., L.P., and Simon Garden Realty Co. L.P. (collectively ("SBG")), and defendants/respondents Philadelphia Gas Works, City of Philadelphia, and Seth A. Shapiro (collectively "PGW"), by their undersigned attorneys, hereby **STIPULATE** to the following:

1. SBG shall remit a payment of \$15,000.00 to PGW to be received on the fifteenth day of every month beginning January 15, 2024 until July 15, 2024. Payments shall be made pursuant to instruction (a) or (b) below, as follows:

- a. Via ACH: PGW hereby incorporates the ACH instructions provided separately to SBG; or
- b. Via Check: FedEx to Philadelphia Gas Works, Commercial Resource Center, 800 W. Montgomery Avenue, Philadelphia, PA 19122, Attn: Steve Kernaghan.

2. Seth A. Shapiro shall be dismissed from the instant action. Petitioners shall file a praecipe discontinuing all claims against Mr. Shapiro with prejudice in the instant action within five (5) days of Court approval of the instant Stipulation.

3. The parties reserve all rights related to claims or defenses concerning any and all billing and collection disputes and/or any other disputes between them.

231101740-Sbg Management Services, Inc Etal Vs Philadelphia



23110174000041

Case ID: 231101740
Control No.: 24026441

ECKERT SEAMANS CHERIN & MELLOTT, LLC

/s/ Mitchell L. Bach

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Attorney for Respondents

Date: 2/28/2024

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Attorney for Petitioners

Date: 2/28/2024

SO ORDERED.

BY THE COURT:

Asse F. R.

J.

First Judicial District of Pennsylvania

231101740
Sgb Management Vs. Pgw, Et Al

*Motion Volume 1
November 17, 2023*



*First Judicial District of Pennsylvania
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Philadelphia, PA 19110
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Page 1

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

SBG MANAGEMENT SERVICES, : November TERM, 2003
INC, et al., :

Plaintiffs, :

:

Vs. :

:

PHILADELPHIA GAS WORKS, : NO. 231101740

et al., :

Defendant. :

:

November 17, 2023

COURTROOM 602, CITY HALL

PHILADELPHIA, PENNSYLVANIA

BEFORE: THE HONORABLE ABBE F. FLETMAN

Reported By:

MONIKA NEMEC, CSR

Official Court Reporter

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22ND FLOOR

PHILADELPHIA PA 19102
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[1] THE COURT CLERK: This Court of
[2] Common Pleas is now declared opened. The
[3] Honorable Abbe F. Fletman is presiding.
[4] Good morning, Your Honor.
[5] THE COURT: Good morning, everyone.
[6] You can all be seated.

[7] We are here today on a motion for an
[8] injunction by plaintiff SBG Management
[9] Services, Inc., et al. vs. Philadelphia Gas
[10] Works, et al.

[11] First of all, if you could all
[12] introduce yourselves for the Court, I would
[13] appreciate that.

[14] MR. YANOFF: Michael Yanoff,
[15] Goldstein Law Partners, for the plaintiff.

[16] MR. ROGERS: Shawn Rogers, also from
[17] the Goldstein Law Partners.

[18] MS. BOUTROS: Sara Boutros for PGW.

[19] MR. HUGG: Jonathan Hugg for the
[20] defendant, PGW.

[21] THE COURT: You may all be seated.

[22] Is Mitchell Bach going to enter his
[23] appearance in this matter?

[24] MR. HUGG: I believe that was his
[25] intention, Your Honor.

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[1] THE COURT: Okay. Well, then, I
[2] should start by disclosing -- well, I would
[3] consider Mitchell Bach an acquaintance and
[4] possibly a friend. I mean, I usually do a
[5] bright line if I've been to somebody's house,
[6] and they have been to my house. I usually
[7] recuse myself. But I was thinking about it,
[8] and I think the last time Mr. Bach was at my
[9] house was around -- well, my son is 32 -- he
[10] was a teenager. So it's been many years. He
[11] also was my lawyer. He represented me when I
[12] left WolfBlock, and that was around 2005. So
[13] we are close friends, but I just thought it
[14] would be -- and also, I don't know if we
[15] should call it a companion case, but there is
[16] another case between these parties that also
[17] has just been assigned to me. So I thought
[18] it was better to address it and let you all
[19] know that before we got too far into things.
[20] MR. YANOFF: Your Honor, we
[21] absolutely have no problem with that
[22] whatsoever.

[23] THE COURT: Thank you.

[24] MR. HUGG: No objection, Your Honor.

[25] THE COURT: Thank you.

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[1] **MR. HUGG:** May I make a suggestion,
[2] Your Honor?
[3] **THE COURT:** Yes, sure.
[4] **MR. HUGG:** Will it be appropriate
[5] for --
[6] (At which time, the Court Reporter
[7] asked for clarification.)
[8] **MR. HUGG:** I had a procedural point,
[9] but I think we should just proceed.
[10] **THE COURT:** Very good.
[11] **MR. YANOFF:** Good morning. May it
[12] please the Court, my name is Michael Yanoff,
[13] from Goldstein Law Partners, and I'm here on
[14] behalf of SBG Management and the five
[15] companies that it manages. All of them were
[16] named plaintiffs.
[17] **THE COURT:** I've read your papers.
[18] So my main question is has gas
[19] actually been turned off? And if so, where?
[20] **MR. YANOFF:** That is a two-part
[21] question, and I can give you both answers.
[22] As of this morning, Your Honor --
[23] **THE COURT:** And -- I'm sorry.
[24] Mr. Hugg is here, but I just do need to deal
[25] with the issue of notice.

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[1] **MR. YANOFF:** Thank you, Your Honor.
[2] and I can answer that question. It may
[3] require a couple minutes, but I can answer.
[4] **THE COURT:** Sure.
[5] **MR. YANOFF:** When we received calls
[6] from the buildings that gas had been turned
[7] off in PGW's unilateral action, we made a
[8] business decision and a personal-level
[9] decision to -- even though we dispute the
[10] amounts that are claimed to be owed by the
[11] shutoff notices, we paid 100 percent of the
[12] gas bills on the shutoff notices on
[13] Wednesday. We were told by PGW that they
[14] would get crews out to turn the gas on.
[15] We then received word from somebody
[16] at PGW -- and I have to say "somebody"
[17] because it's impossible to speak to anybody
[18] in that building, anybody of authority --
[19] that they now required what I call extortion
[20] damages -- reconnect fees, equipment
[21] replacement fees. And they gave us an
[22] amount.
[23] **THE COURT:** You will have your
[24] chance.
[25] **MR. YANOFF:** And they gave us an

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[1] Do we all agree that notice -- that
[2] the complaint has been served and the motion
[3] papers have been served?
[4] **MR. YANOFF:** For the Court's
[5] knowledge, I filed the certificate of service
[6] yesterday afternoon indicating that service
[7] had been made.
[8] **MR. HUGG:** Thank you.
[9] Your Honor, the motion papers were
[10] received at approximately 2:30 yesterday.
[11] **THE COURT:** Okay. So they were
[12] served in advance of this hearing. That is
[13] what I wanted to know. The Court finds that
[14] notice of the hearing was properly given.
[15] **MR. YANOFF:** Thank you, Your Honor.
[16] **THE COURT:** Now back to my question
[17] about has gas actually been cutoff. I view
[18] this as a hearing for a special injunction.
[19] And, again, just to be candid with you, I'm
[20] out of town next week. I am not back until
[21] Tuesday in the office. So I appreciate you
[22] coming on short notice. I wanted to have
[23] this hearing before I go to address if there
[24] are human beings out there without access to
[25] gas.

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[1] amount, which even though we disagreed with
[2] it, we paid. We paid them on Thursday
[3] morning and then were told that "Okay. We
[4] are going to get the crews out, and we are
[5] going to turn the gas back on."
[6] Didn't happen. One building, they
[7] came after hours at approximately 7:00
[8] o'clock last night. I received word from my
[9] people that they have turned the gas on at
[10] Marchwood. They are currently at Simon
[11] Garden, and they are currently at Marshall.
[12] I have no word with respect to Fernrock and
[13] Oak Lane.
[14] However, as I indicated to Your
[15] Honor, even though we don't agree that we owe
[16] that money, we paid that money in order to
[17] get the gas service put back on.
[18] **THE COURT:** Okay. I hear you.
[19] **MR. YANOFF:** Your Honor, I should say
[20] one other thing, if I may.
[21] As a result of this action, I have
[22] been fielding calls for the past three days
[23] from the Pennsylvania Attorney General's
[24] Office, from Philadelphia L&I. In fact, I
[25] got another one this morning from the

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[1] Philadelphia Housing Authority, all wanting
[2] to know why the gas was turned off. I have
[3] spoken to each one of them, and I have
[4] explained that we are here this morning and
[5] invited them to Your Honor's courtroom to
[6] hear the proceedings. They said it wasn't
[7] necessary. But I just want you to know that
[8] we've been under barrage since that's
[9] occurred.

[10] **THE COURT:** So how many buildings are
[11] at issue here?

[12] **MR. YANOFF:** Five.

[13] **THE COURT:** And is gas used for
[14] cooking and heating in those buildings?

[15] **MR. YANOFF:** For the most part, yes.

[16] There is one building that is half electric
[17] and a half gas. Fernrock, Your Honor.

[18] Fernrock is half electric and half gas.

[19] **THE COURT:** So Fernrock -- does that
[20] mean that gas is used for heat or not?

[21] **MR. YANOFF:** In part of the building.

[22] **THE COURT:** But the rest, it's
[23] required for heat?

[24] **MR. YANOFF:** Yes, Your Honor.

[25] And if I might add, Your Honor -- and

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[1] I don't want to go beyond the scope of your
[2] question, but it's certainly no coincidence
[3] that it occurred on the coldest day of the
[4] year, which is part of why we filed a
[5] preliminary injunction request. It is not a
[6] coincidence, Your Honor.

[7] **THE COURT:** Okay. And what's the --
[8] well, I know enough to know there is a
[9] summary judgment motion pending in what I
[10] will call the underlying case or the related
[11] case.

[12] What is the schedule on that case?

[13] So I think you may know I have been
[14] in this Court for approximately three days in
[15] the Commerce program. So my understanding is
[16] you don't get trial dates until after summary
[17] judgement is decided.

[18] So am I correct? No trial date has
[19] been set?

[20] **MR. YANOFF:** There is no trial date.

[21] Discovery is closed. There is no trial date.

[22] But Your Honor should be well aware that
[23] there are also corollary PUC hearings, which
[24] obviously are not within Your Honor's
[25] jurisdiction. But there are ongoing PUC

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[1] hearings that are still ongoing, and we will
[2] have hearings in the early part of 2024 again
[3] on these issues. So there are two parallel
[4] paths that these cases are going on, each
[5] dealing with different issues, but all
[6] arising from the same fact, and that is the
[7] improper assessment of tariffs on liens that
[8] were filed by the City of Philadelphia.

[9] **THE COURT:** But does PUC deal with
[10] the past or just the future?

[11] **MR. YANOFF:** Well, they are dealing
[12] with refunds and reimbursements that are owed
[13] to us over the past, which amount to
[14] approximately \$2 million, Your Honor.

[15] Now, I know PGW -- before Mr. Hugg
[16] stands up again, I know that PGW doesn't
[17] believe that they owe us money. And in fact
[18] they believe that we owe them money, which is
[19] exactly why this shutoff was improper,
[20] because these accounts are all disputed. And
[21] the PUC code says you may not shut off gas
[22] service on a disputed account. That is why
[23] we are here.

[24] **THE COURT:** Okay. And do you have
[25] witnesses today?

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[1] **MR. YANOFF:** I have witnesses, but I
[2] don't think the facts are in dispute except
[3] as to the amounts that are owed, which are
[4] the subject of both the PUC and the case
[5] which Your Honor has now been so luckily
[6] assigned.

[7] **THE COURT:** All right. Then let me
[8] hear from Mr. Hugg. And, again, Mr. Hugg,
[9] what I am interested in is was gas shut off?
[10] What's the status?

[11] There are five buildings. Was gas
[12] shut off? Has gas been restored? And what
[13] is your position on whether gas will be
[14] provided until these underlying disputes are
[15] resolved?

[16] **MR. HUGG:** May it please the Court,
[17] Your Honor, PGW's position is that this
[18] dispute is moot or becoming moot, and there
[19] is no need to rule because gas is in the
[20] process of being restored. Gas, as
[21] Mr. Yanoff acknowledged --

[22] **THE COURT:** Do you have witnesses
[23] that are going to testify to that?

[24] **MR. HUGG:** Your Honor, since this is
[25] a special injunction, ordinarily, in my

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[1] experience, it's decided on the papers. I
[2] was given --
[3] **THE COURT:** I don't have any papers
[4] from you?
[5] **MR. HUGG:** Yes, I haven't had a
[6] opportunity, Your Honor.
[7] I will say, Your Honor, I am
[8] representing to the Court that gas has been
[9] restored at one property and is in the
[10] process of being restored on the other
[11] properties. I have chronology, which I'd
[12] like to hand up to the Court if it's helpful.
[13] We have a schedule for when this is going to
[14] occur.
[15] **THE COURT:** Again, you have one for
[16] Mr. Yanoff?
[17] **MR. HUGG:** I do, Your Honor.
[18] **THE COURT:** Give it to him first,
[19] please.
[20] We are we going to mark this D-1.
[21] **MR. HUGG:** Yes. This is
[22] illustrative.
[23] (At which time, D-1 schedule was
[24] marked for identification.)
[25] **MR. HUGG:** Your Honor, we have

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[1] provided -- PGW has complied with all the
[2] statutory, regulatory requirements to turn
[3] off the gas. SBG knew six weeks ago that
[4] this was coming. Mr. Yanoff contacted me.
[5] Mr. Yanoff raised this at a PUC hearing on
[6] the record where the ALJ told him on the
[7] record that SBG had to pay, that it's proper
[8] for PGW to insist upon payment. This went
[9] on. SBG went silent. PGW turned off the gas
[10] earlier this week. SBG paid. PGW shut off
[11] the gas beginning on Monday and continuing
[12] through Wednesday.
[13] **THE COURT:** So is it your position
[14] that the amounts that were paid were no
[15] longer in dispute because they have been
[16] adjudicated by ALJ?
[17] **MR. HUGG:** No, Your Honor. But the
[18] ALJ, when SBG raised --
[19] **THE COURT:** I'm sorry. What is
[20] "ALJ"?
[21] **MR. HUGG:** I'm sorry. The ALJ,
[22] excuse me. The administrative law judge
[23] before whom SBG raised this issue
[24] specifically said on the record that SBG
[25] should pay

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[1] **THE COURT:** So then isn't the answer
[2] to my question yes, that it's your position
[3] that those amounts have been adjudicated?
[4] Here's what I don't understand,
[5] Mr. Hugg.
[6] **MR. HUGG:** Yes, Your Honor.
[7] **THE COURT:** If these parties are
[8] having a fight about how much money is owed,
[9] and one side says "You owe me money," and the
[10] other side says "Oh, no. You owe me money,"
[11] by what right does PGW terminate gas for
[12] human being tenants who are living in those
[13] buildings and require heat in November?
[14] **MR. HUGG:** Because, Your Honor, PGW
[15] complied with the statutory scheme laid out
[16] in the statute and PUC regulations. There
[17] doesn't seem to be any dispute about that.
[18] The monies were not paid. There was ample
[19] warning.
[20] And in that sense, Your Honor, this
[21] is self-created harm. And this is important,
[22] Your Honor. SBG collects gas payments from
[23] its tenants, and then it doesn't remit that.
[24] **THE COURT:** SBG collects?
[25] **MR. HUGG:** There is a rent payment,

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[1] which includes gas payments.
[2] **THE COURT:** Okay.
[3] **MR. HUGG:** The tenants paid that to
[4] SBG.
[5] **THE COURT:** I'm sorry, Mr. Hugg.
[6] That makes it worse, not better, because now
[7] there are tenants who have -- they have paid
[8] for this gas that PGW is not providing to
[9] them.
[10] **MR. HUGG:** Right. SBG is not
[11] escrowing.
[12] **THE COURT:** I mean, one of the
[13] elements in an injunction is public good.
[14] **MR. HUGG:** So the public good is
[15] served, Your Honor, by SBG paying its gas
[16] bills or going through the proper
[17] administrative process do to so. There is a
[18] substantial jurisdictional question here,
[19] Your Honor.
[20] Could you please instruct Mr. Yanoff
[21] to stop mumbling behind my back, Your Honor?
[22] **MR. YANOFF:** I'm sorry, Your Honor.
[23] If it's distracting --
[24] **THE COURT:** No. Both of you cut it
[25] out. Not in this courtroom.

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[1] **MR. HUGG:** Thank you, Your Honor.
[2] So, Your Honor, gas is being turned
[3] back on. It is going to take some time. It
[4] is today. It's continuing. By tomorrow it
[5] should all be back on. So in that sense,
[6] Your Honor, this dispute is moot.
[7] Your Honor, there is no irreparable
[8] harm --
[9] **THE COURT:** Excuse me for a second.
[10] Well, I think the Court can take judicial
[11] notice that it's suppose to be as low as
[12] 43 degrees today and 40 degrees tomorrow.
[13] **MR. HUGG:** Okay, Your Honor. But,
[14] again, the gas is being turned back on. This
[15] is a motion to get the gas back on. The gas
[16] is being turned back on. The process began
[17] as soon as the proper fees were paid. There
[18] is no dispute, Your Honor, about the amounts.
[19] There is no dispute about whether PGW
[20] followed correct statutory and regulatory
[21] procedure.
[22] **THE COURT:** Okay. I know you haven't
[23] had the benefit of briefing this at this
[24] point, but I thought the papers that I read
[25] dispute that. I thought it was plaintiff's

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[1] position that PGW did not appropriately
[2] follow the law in turning off the gas. And I
[3] thought I heard Mr. Yanoff say "We paid the
[4] money, but we paid it upon -- we paid it upon
[5] dispute. We paid it to get the gas turned
[6] back on because PGW told us they were only
[7] going to turn on the gas if we paid."
[8] **MR. HUGG:** My response to that, Your
[9] Honor, is why didn't SBG come to court six
[10] weeks ago when they received the notices?
[11] They didn't come to court. They waited until
[12] after the gas was turned off in order to come
[13] here. So in that sense, Your Honor, there is
[14] no emergency.
[15] **THE COURT:** But, again, Mr. Hugg, I
[16] understand that. There is a business dispute
[17] between two entities, but this is not a
[18] situation where you have an individual
[19] homeowner who hasn't paid their gas bills and
[20] knows that eventually, if they don't pay
[21] their bills, that the gas is going to be
[22] turned off.
[23] Based on what I heard you say, there
[24] are tenants in these buildings. They have
[25] paid for their gas to their landlord, and so

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[1] basically they are --
[2] **MR. HUGG:** They are pawns, Your
[3] Honor. SBG is using them as pawns. The
[4] tenants paid the money to SBG. SBG should
[5] have paid that to PGW.
[6] **THE COURT:** I hear you. But even if
[7] I agree with everything you say, there are
[8] still individuals out there who don't have
[9] heat during the end of autumn when it gets
[10] cold.
[11] **MR. HUGG:** May I address the
[12] immediate situation before us, Your Honor?
[13] **THE COURT:** Yes.
[14] **MR. HUGG:** The gas is being turned
[15] back on.
[16] **THE COURT:** Okay. But how do you
[17] know that is what is going to happen?
[18] **MR. HUGG:** I'm going to address that,
[19] Your Honor.
[20] **THE COURT:** Let us not interrupt each
[21] other. Let's make a good record. Let me ask
[22] the question, and then you can answer the
[23] question.
[24] **MR. HUGG:** Yes, Your Honor.
[25] **THE COURT:** So the question is -- if

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[1] I take you at your word, it's going to all be
[2] on by tomorrow, and that is all good.
[3] Are your clients willing to agree
[4] that they won't turn the gas off until the
[5] underlying payment dispute is resolved?
[6] **MR. HUGG:** Your Honor, my answer to
[7] that is if my clients wanted to turn off the
[8] gas again, it would have to go through the
[9] entire 37-day procedure. It's not like they
[10] can just press a button today to turn off the
[11] gas tomorrow. They have to give notice,
[12] which they did here. They have to give 37
[13] days' notice to SBG, and then they have to
[14] give 30 days' notice to the tenants. That's
[15] more than enough time for SBG to come to the
[16] Court, probably not even on an emergency
[17] basis, and for that issue to be adjudicated.
[18] So PGW lacks the authority to just
[19] capriciously, instantly turn off the gas.
[20] Now, Your Honor, I'm not even sure
[21] PGW can turn off the gas with the outset of
[22] cold weather like this. But once we get
[23] further into the winter, I don't know that,
[24] Your Honor. But it is my understanding, Your
[25] Honor, that PGW has to give about six weeks'

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[1] notice. So this violation was cured because
[2] SBG paid, and the gas is being turned back
[3] on. If SBG were to cease payment, PGW would
[4] have to give notice again, and the cycle
[5] would start all over, at the very least. But
[6] I'm not sure, Your Honor, PGW can, with the
[7] onset of winter, turn off the gas. I don't
[8] know that to be true, Your Honor.

[9] **THE COURT:** Well, that's something
[10] that would be good for me to know.

[11] **MR. HUGG:** Yes, Your Honor.

[12] **THE COURT:** This cannot be the first
[13] time a landlord -- it can't be the first time
[14] that a landlord hasn't paid PGW, and it can't
[15] be the first time that there are tenants who
[16] are caught in this terrible situation.

[17] So what usually happens? How does
[18] PGW usually handle this kind of situation?

[19] **MR. HUGG:** I have a lawyer from PGW
[20] here to speak to that, Your Honor.

[21] **THE COURT:** Okay. Mr. Yanoff, do you
[22] mind if I hear from the PGW lawyer?

[23] **MR. YANOFF:** No, Your Honor. I'd be
[24] happy to hear the answer myself.

[25] **THE COURT:** Well, she is going to

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[1] have to come up to the mic and introduce
[2] herself.

[3] (At which time, the Court Reporter
[4] asked for clarification.)

[5] **THE COURT:** I can't wait to move
[6] courtrooms. This is my old mass tort
[7] courtroom. So I will be moving to a
[8] courtroom with better acoustics.

[9] **MR. YANOFF:** Unfortunately, Your
[10] Honor, having been in many courtrooms in this
[11] building, I'm not sure that that room exists.

[12] However, having said that, my
[13] understanding, under the Public Utility Code,
[14] is December 1st is the cutoff date. So after
[15] December 1st through April 1st, I don't
[16] believe that a utility has the right to
[17] unilaterally turn off service. That is under
[18] the code, Your Honor.

[19] **THE COURT:** Okay. Well, I'll hear
[20] from the PGW lawyer.

[21] **MS. CHRISTLIEB:** Good morning, Your
[22] Honor. Graciela Christlieb with Philadelphia
[23] Gas Works.

[24] **THE COURT:** Say your name again.

[25] **MS. CHRISTLIEB:** C-h-r-i-s-t-l-i-e-b,

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[1] G-r-a-c-i-e-l-a.

[2] **THE COURT:** Good morning.

[3] **MS. CHRISTLIEB:** Good morning.

[4] Mr. Yanoff is correct. There is a
[5] winter moratorium in place that goes into
[6] effect on December 1st. It ends on
[7] March 31st. And as of April 1st, PGW can, in
[8] fact, resume terminations. So terminations
[9] do not occur during what the PUC considers
[10] the winter months.

[11] **THE COURT:** But if you terminated
[12] before December 1st, what happens then?

[13] **MS. CHRISTLIEB:** Terminations that
[14] occurred before December 1st stand until
[15] restoration requirements are met.

[16] **THE COURT:** Okay.

[17] **MS. CHRISTLIEB:** So people are
[18] terminated for a variety of reasons.
[19] Generally it is nonpayment, so their service
[20] is restored upon payment. And the payment
[21] not only includes the termination amount,
[22] which is the past-due balance, but the
[23] restoration terms include a security deposit,
[24] if one is required, as well as a reconnection
[25] fee, which varies depending on the type of

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[1] building. For commercial buildings it's
[2] different than for residential buildings.

[3] So say somebody is turned off in
[4] November, and they want their gas on. What
[5] they would go by is the restoration terms as
[6] listed in the termination notices.

[7] **THE COURT:** But, again, what I am
[8] concerned with is what happens in this type
[9] of situation where your customer is a
[10] landlord and they are tenants.

[11] **MS. CHRISTLIEB:** Okay. So there is a
[12] specific provision in the code, which is also
[13] spelled out in the termination notices. So
[14] the way termination notices work for leased
[15] premises, meaning landlord situations with
[16] multiple units -- there is a 37-day notice
[17] that is given to the landlord specifically
[18] stating that this termination is going to
[19] proceed within 7 days. If you do not fulfill
[20] the payment requirements, we are going to
[21] start noticing your tenants.

[22] In this instance, we did issue 37-day
[23] notices to SBG on September 29th. And
[24] because the payments were not made, we then
[25] went ahead and did the 30-day notices, which

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[1] goes specifically to tenants. So that's when
[2] we make the tenants aware of this situation.
[3] And within the 30-day shutoff notices -- and
[4] I have copies of these notices if you would
[5] like them.
[6] **MR. HUGG:** Excuse me. Would you like
[7] me to hand these up, Your Honor?
[8] **THE COURT:** This is a little
[9] unorthodox because, I mean, Mr. Yanoff is the
[10] Movent, and I'm not sure he has presented his
[11] case to the extent he is going present it,
[12] and I am not sure if I'm hearing a witness or
[13] a lawyer. So based on this testimony, I
[14] think Mr. Yanoff should have an opportunity
[15] to cross-examine.
[16] So it's your case. If you want to
[17] introduce documents, introduce them.
[18] **MR. HUGG:** Your Honor, if I could
[19] speak to them -- to the process. Your Honor,
[20] I do not believe there is any factual dispute
[21] right now about the gas being turned back on,
[22] so I don't know that that testimony is
[23] necessarily required for that.
[24] Inasmuch as this is a motion to
[25] assure gas is turned back on, it is

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[1] undisputed that it has been turned back on at
[2] one property.
[3] **THE COURT:** What happens if I order
[4] that it be turned back on by 5:00 o'clock
[5] today in every property?
[6] **MR. HUGG:** Well, I don't think that
[7] would be -- PGW would be physically able to
[8] comply with that, Your Honor.
[9] **MS. CHRISTLIEB:** Your Honor, if I
[10] may?
[11] **THE COURT:** You may.
[12] **MS. CHRISTLIEB:** It is certainly not
[13] my intention to make myself a witness. So if
[14] you would like me to stay specifically to
[15] general procedural matters that PGW does with
[16] respect to terminations and shutoffs, and not
[17] specifically to SBG, I can certainly do that.
[18] But what I can say about restorations
[19] is that the amount of time required for
[20] restoration is also covered in the code. It
[21] is a 72-hour timeline before the winter
[22] moratorium goes into effect. It is a 24-hour
[23] timeline after the winter moratorium goes
[24] into effect.
[25] So since we are before December 1st,

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[1] PGW has 72 hours to restore service at any
[2] property once full payment is made.
[3] **THE COURT:** Okay. At this point, let
[4] me just ask you to step back.
[5] Mr. Yanoff, you can come back up.
[6] Do you want to create any kind of
[7] evidentiary record today?
[8] **MR. YANOFF:** I don't believe it's
[9] necessary, Your Honor; however, I'd like to
[10] be able to address certain comments that
[11] Mr. Hugg made for whatever record exists in
[12] this matter, if I may.
[13] **THE COURT:** Yes. Well, again, I
[14] don't think you closed your case or your
[15] arguments, so I am going to finish hearing
[16] from you, and then I will hear from Mr. Hugg.
[17] And then if there is response from you, I
[18] will hear that.
[19] **MR. YANOFF:** It is somewhat unusual,
[20] Your Honor, but I think it works in this
[21] situation.
[22] **THE COURT:** Okay.
[23] **MR. YANOFF:** Your Honor, in the first
[24] instance, Mr. Hugg has misspoken with respect
[25] to what the ALJ indicated with respect to

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[1] disputed accounts. There was never a
[2] reference to a specific amount. There was a
[3] recognition that the accounts were in
[4] dispute. And what she said was that if
[5] charges are current charges, she will not
[6] entertain any kind of a motion; however, we
[7] have taken the position all along that these
[8] accounts are in serious dispute, and I can go
[9] into that. But for Your Honor's purposes,
[10] with all do respect, I don't think it's
[11] necessary.
[12] **THE COURT:** Okay. It's
[13] November 17th. If we get to December 1st,
[14] are we going to resolve the underlying case
[15] before March 31st?
[16] **MR. YANOFF:** Probably not.
[17] **THE COURT:** Why not? Because there
[18] is a summary judgement motion, that to me
[19] means discovery must have closed; yes?
[20] **MR. YANOFF:** Yes. But I am very
[21] confident that the discovery -- the summary
[22] judgement motion will be defeated.
[23] **THE COURT:** Then we will schedule a
[24] trial.
[25] **MR. YANOFF:** We will schedule a

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[1] trial, but we don't know whether that will
[2] take place. PGW's history has been to appeal
[3] this ad nauseam. So the case will never be
[4] done.

[5] We have been up to the Pennsylvania
[6] Supreme Court already on the PUC appeals.
[7] That took years to accomplish, from 2008 to
[8] just two years ago. So I can't represent to
[9] the Court that this matter will go away even
[10] if I'm successful at the trial, which I
[11] believe that I will be.

[12] But that is not how this game has
[13] been played from the very beginning, so I
[14] can't make that representation to you.

[15] **THE COURT:** Well, if there is a trial
[16] and an adjudication -- all right. I hear
[17] you.

[18] What else do you want me to know?

[19] **MR. YANOFF:** I also want you to know,
[20] Your Honor -- again, the PUC order, in
[21] approximately six or seven opinions and
[22] orders -- that PGW was not -- actually, the
[23] exact language is "cease and desist from any
[24] violations of the Public Utility Code." And
[25] the primary violation here is that the only

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[1] accounts that can be terminated for lack of
[2] payment are those that are -- and this is
[3] right from 1406 of the code. Title 66,
[4] Section 1406(a). It says one of the reasons
[5] for termination is nonpayment of an
[6] undisputed delinquent account. And as I
[7] indicated to Your Honor, these are clearly
[8] disputed accounts.

[9] **THE COURT:** You can't think that
[10] these five buildings can just get gas for
[11] free?

[12] **MR. YANOFF:** We are not --

[13] **THE COURT:** Please don't interrupt.

[14] **MR. YANOFF:** Sorry, Your Honor.

[15] **THE COURT:** So there has to be some
[16] kind of agreement on interim payments
[17] because, as I am sure you know, I can't enter
[18] an injunction without a bond. So even if I
[19] entered an injunction, we would have to have
[20] some either agreement or record and
[21] adjudication on what that bond is going to be
[22] in the interim.

[23] So what is your client willing to pay
[24] for gas during the intervening time?

[25] **MR. YANOFF:** If we were able to get a

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[1] legitimate bill, we would pay for current-use
[2] service.

[3] If Your Honor will permit me, let me
[4] give you a couple of examples as to why the
[5] accounts are in dispute.

[6] In October of '22, we went to a
[7] closing on Marchwood. We did a refi. As is
[8] usual for the type of company, they ask for a
[9] payoff balance submitting unpaid utility
[10] bills. They received a report that said that
[11] there was a zero balance. Two months later,
[12] we got a bill for \$774,641.21. Fernrock,
[13] same thing. In May of '22, we received -- we
[14] refied that building, and we were told that
[15] we owe \$38,000, which was paid at closing.
[16] Two months later, we got a bill for
[17] \$734,799.21. Marshall, same thing. Oak
[18] Lane, same thing. Simon Garden, same thing.
[19] We had absolutely no faith, and that has been
[20] the -- one of the major issues before the
[21] PUC.

[22] **THE COURT:** So, Mr. Yanoff, your
[23] clients got a cutoff notice 37 days ago;
[24] correct?

[25] **MR. YANOFF:** Correct.

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[1] **THE COURT:** So why did you wait until
[2] now to come to court?

[3] **MR. YANOFF:** Two reasons. First, we
[4] have absolutely no way to verify that the
[5] amounts that they are claiming on the shutoff
[6] notices are the right amounts because there
[7] is amounts on the shutoff notices that can be
[8] bad information, whether they were accurate
[9] or not.

[10] **THE COURT:** What does that have to do
[11] with whether you -- okay, you get a shutoff
[12] notice --

[13] How many people live in these five
[14] buildings?

[15] **MR. YANOFF:** They vary, Your Honor.

[16] **THE COURT:** Are we talking hundreds?

[17] **MR. YANOFF:** Hundreds.

[18] **THE COURT:** So you have hundreds of
[19] people who live in the buildings. Your
[20] client gets a notice that gas is going to be
[21] shut off. I get that the money is in
[22] dispute, but -- well, do you call up someone
[23] who represents PGW and say hey, can we work
[24] something out? Or do you wait until the gas
[25] is actually turned off?

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[1] People are affected by it and then
[2] come to court.

[3] **MR. YANOFF:** Two answers to that.
[4] Number 1, we had a so-called settlement
[5] meeting with PGW that went absolutely nowhere
[6] because they insist we owe \$1.7 million.

[7] **THE COURT:** I'm not talking about
[8] settlement. I am talking about having some
[9] kind of interim agreement to get us to the
[10] point where the underlying dispute can be
[11] adjudicated. Because if it were just the
[12] plaintiffs and the defendants here and you
[13] were fighting about money, have at it. But,
[14] again, there are people who are being hurt by
[15] this, and you need to come up -- well, either
[16] you all need to talk and figure out some way
[17] to get us from now until this dispute is
[18] resolved with the hundreds of people living
[19] in these buildings having heat, or I am going
[20] to have to adjudicate that and figure out how
[21] to make that happen.

[22] **MR. YANOFF:** Your Honor, I will
[23] represent to the Court that our staff has
[24] tried time and time again to get accurate
[25] reading information so we could pay the bills

[1] on a regular basis. I have a witness here to
[2] testify -- I don't want to necessarily make a
[3] record, but we have a witness here who will
[4] testify that she is the person who does this.

[5] It's not possible. You cannot speak
[6] to anybody at PGW that has an answer to the
[7] question, how much money do I really owe?
[8] How much gas did I really use? It's not
[9] possible.

[10] **THE COURT:** Let's try this a
[11] different way. How about if we have an
[12] evidentiary hearing on this -- not this
[13] special injunction motion, but the
[14] preliminary injunction motion, where the
[15] Movant would have to prove all the elements
[16] of an injunction and the defense would get to
[17] respond to that. And in the interim -- and I
[18] am talking about having that the week after
[19] next, as in before December 1st. And in the
[20] interim, there is going to be no gas shutoff.

[21] How does that sound to you,

[22] Mr. Yanoff?

[23] **MR. YANOFF:** It sounds like so much
[24] fun, Your Honor. I will be happy to do that.
[25] I would be prepared to do that.

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[1] However, I just wanted to say to Your
[2] Honor how our position would have been to --
[3] with respect to why didn't we come in before

[4] Number 1, there's no harm until the gas is
[5] turned off. A threat has been made that
[6] we're going to turn the gas off, but there is
[7] no harm. There is no gas being turned off.

[8] So if I were to come before Your
[9] Honor and say I have immediate and
[10] irreparable harm, Your Honor, Mr. Hugg could
[11] say, and Your Honor could agree, well, wait a
[12] minute. The gas is still on, isn't it? So
[13] nothing has occurred.

[14] But we are looking for a prohibitory
[15] injunctive order because we don't want this
[16] to happen again.

[17] **THE COURT:** I understand. But,
[18] again, I'm not saying this is what's
[19] happening, but one could be suspicious that
[20] your clients are trying to get to
[21] December 1st.

[22] **MR. YANOFF:** Believe me, Your Honor,
[23] I will -- as an officer of this Court, I will
[24] tell you that that is not the case. We were
[25] caught completely by surprise.

[1] **THE COURT:** Well, again, Mr. Yanoff,
[2] that would be for the Court to decide at a
[3] full-blown hearing with witnesses where I
[4] could judge their credibility.

[5] Let me hear from Mr. Hugg on what he
[6] thinks about that potential plan to move this
[7] forward.

[8] **MR. HUGG:** Your Honor, regarding the
[9] question about communication --

[10] **THE COURT:** How about answering my
[11] question? You can go back and make your
[12] record. But does it make sense for us to
[13] have an evidentiary hearing before
[14] December 1st?

[15] **MR. HUGG:** No. It doesn't, Your
[16] Honor, because Mr. Yanoff can communicate
[17] with me rather than going through the
[18] customer process at PGW, which I understand
[19] Mr. Yanoff and his client find frustrating.
[20] Mr. Yanoff can communicate with me, and I can
[21] handle it at that level.

[22] **THE COURT:** Well, unless you're
[23] telling me that PGW is going to agree to not
[24] turn the gas off in these five buildings
[25] until the underlying disputes are resolved, I

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[1] am going to have a hearing on this because I
[2] am going to have to make a decision. Or you
[3] will all agree to that on some interim
[4] payments. But I've got this in front of me,
[5] and I got to do something today. And I don't
[6] think it's fair for me to order you to turn
[7] on the gas and then get you past December 1st
[8] when your clients can't do anything again
[9] until April 1st.

[10] If we are talking about an injunction
[11] until November 28th, so that's -- that is 11
[12] days.

[13] How much gas do these buildings use
[14] in 11 days?

[15] **MR. HUGG:** I don't know, Your Honor.

[16] **THE COURT:** Does your client know?

[17] **MS. CHRISTLIEB:** Not specifically in
[18] 11 days, Your Honor. I can tell you the
[19] budgets for the one, given that we double
[20] budgets for the month, and that's how we --
[21] (At which time, the Court Reporter
[22] asked for clarification.)

[23] **THE COURT:** It was a yes or no
[24] question.

[25] **MS. CHRISTLIEB:** No, not for 11 days.

[1] Your Honor.

[2] **THE COURT:** So you wanted to say
[3] something in response to Mr. Yanoff.

[4] **MR. HUGG:** What I'm saying is -- what
[5] I wanted to say, Your Honor, is I understand
[6] Mr. Yanoff and his client find the customer
[7] service process frustrating. Mr. Yanoff has
[8] communicated with me, and I can get
[9] information.

[10] **THE COURT:** And we can also schedule
[11] an injunction hearing, and if you two settle
[12] it before then, great. If not, you're having
[13] a hearing.

[14] **MR. HUGG:** Very good, Your Honor.

[15] **THE COURT:** Mr. Yanoff, talk to me
[16] about the bond. And get to a microphone,
[17] please.

[18] **MR. YANOFF:** Your Honor, since it
[19] appears to be a relatively short-term fix, at
[20] least between now and the full hearing, I
[21] would respectfully request that we have a
[22] minimum bond because of the dispute in the
[23] amount, which relates to meter calibration as
[24] well. I am more than happy to have a
[25] conversation with Mr. Hugg about how to

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[1] resolve that portion of it. But I think
[2] because we are talking about a special
[3] injunction for the next 11 days, I would
[4] respectfully submit -- and in light of the
[5] fact that we have paid 100 percent of the
[6] disputed amount plus the reconnection fees, I
[7] would respectfully submit that a minimum bond
[8] would be appropriate for at least this short
[9] period of time.

[10] **THE COURT:** All right. Mr. Hugg,
[11] what is your position on the bond amount?

[12] **MR. HUGG:** Your Honor, to restore
[13] service requires SBG to pay \$74,837.73. That
[14] should be the baseline, Your Honor.

[15] I believe the rule of appellate
[16] procedure, which was frequently cited, calls
[17] for a bond in the amount of 120 percent.

[18] **THE COURT:** But 120 percent of what?
[19] What does that \$74,000 represent?

[20] **MR. HUGG:** That was the amount to
[21] cure the delinquency to get the gas turned
[22] back on.

[23] **THE COURT:** But what does that have
[24] to do with how much 11 days of gas service to
[25] these building would cost?

[1] **MR. HUGG:** Well, Your Honor --

[2] **THE COURT:** It doesn't seem to be
[3] related.

[4] **MR. HUGG:** Your Honor, I think I
[5] would be speculating about a correct number.
[6] There should be at least a five-figure bond
[7] to cover the cost to PGW of restoring
[8] service, of doing the engineering work,
[9] technical work required here, Your Honor.

[10] When you turn off gas, it requires a
[11] crew to go out there, Your Honor. I don't
[12] know how much that costs. But according to
[13] the chart I am looking at, there are
[14] reconnection fees for these properties, a
[15] range from about \$200 up to about \$650.

[16] **THE COURT:** So let me hear from
[17] Ms. Christlieb again.

[18] So what's a month?

[19] **MS. CHRISTLIEB:** Yes, Your Honor. So
[20] for every property, PGW's system runs an
[21] algorithm that lets us know what the average
[22] budget is per month at the property; right?
[23] So I can tell you that for the properties
[24] that were terminated, a month of usage to
[25] cover all the properties, the historical

[1] number is \$11,740. That is an amount that I
[2] got just now, because I took the chart that
[3] Mr. Hugg was looking at, and the total
[4] security deposits for the buildings are
[5] double that because the security deposit is
[6] two months. So one month would be \$11,000.

[7] **THE COURT:** I understand.

[8] **MS. CHRISTLIEB:** So I can't break it
[9] down for 11 days, but that would be for 30.

[10] **THE COURT:** I'm sorry. Say that
[11] again.

[12] **MS. CHRISTLIEB:** I said I can't break
[13] it down to 11 days, but that amount would be
[14] 30.

[15] **THE COURT:** So it seems 11 days is
[16] \$4,305. I divided it by 30, I multiplied it
[17] by 11, and that is what I got.

[18] **MS. CHRISTLIEB:** If that's the math,
[19] Your Honor.

[20] As an aside, I would like to let you
[21] know I just received a phone call letting me
[22] know that all of the properties should be
[23] back on by the end of the day today.

[24] **THE COURT:** Excellent.

[25] **MS. CHRISTLIEB:** The gas is on --

[1] well, provisionally. We do need to make sure
[2] that we will have somebody from maintenance
[3] to grant us access at Gofrey, which is the
[4] last property. Actually it's on Gofrey
[5] Avenue.

[6] **THE COURT:** We will work that out.

[7] **MS. CHRISTLIEB:** PGW -- if provided
[8] the access we need, it should be done by the
[9] end of the day.

[10] **THE COURT:** Okay.

[11] Can we agree that Mr. Yanoff should
[12] be dealing with Mr. Hugg on these issues and
[13] not be trying to talk to PGW customer
[14] service?

[15] **MR. HUGG:** You can certify me, Your
[16] Honor. Yes.

[17] **MS. CHRISTLIEB:** Your Honor, I can
[18] speak to the fact that PGW has -- so I
[19] practice exclusively before the PUC, so I am
[20] the person. So on a much bigger scale is
[21] SBG, but we have customers that go through
[22] this all the time. There are several
[23] provisions that are in place for internal
[24] disputes. So customers contact the company.
[25] They can open an internal dispute. During

[1] the course of that internal dispute, a hold
[2] is placed on the account. If they are not
[3] satisfied, they can file an informal or
[4] formal complaint with the commission. During
[5] those periods of time, holds are placed on
[6] the account. If Mr. Yanoff or one of the
[7] subsidiaries of SBG were to call in and say
[8] hey, I don't understand this bill. I'm
[9] trying to dispute this specific bill, a
[10] dispute would be entered on their behalf.
[11] And obviously SBG is aware of the complaint
[12] procedures in the PUC arena because they have
[13] a current PUC complaint.

[14] What I will say is -- because I know
[15] the question has been asked about whether or
[16] not the gas will be shut off again after
[17] April 1st. So the commission's regulations
[18] are very clear. During pendency of a
[19] dispute, customers still have to pay their
[20] bills going forward. So you file a dispute
[21] saying hey, I agree with my bill; right? The
[22] commission opens a dispute for you, either on
[23] a formal or informal level, and PGW or any
[24] utility is prohibited from terminating
[25] service on that amount during the pendency of

[1] the dispute.

[2] Any bills that accrue thereafter are
[3] the responsibility of the customer. The
[4] customer still has to pay them during the
[5] pendency of the dispute, and utilities are
[6] permitted to terminate service if those bills
[7] are unpaid.

[8] What we have here is a situation
[9] where, as Mr. Yanoff stated, these complaints
[10] before the PUC are very old. They predate my
[11] working at PGW. We have a batch of 2012
[12] disputes. We have a batch of 2015 or '16
[13] disputes. Those disputes are ongoing. I
[14] agree they have gone up to the Supreme Court
[15] and back down. We are remanded on a lot of
[16] them. But in the period of time after those
[17] disputes were filed, PGW was also not getting
[18] paid for the service.

[19] Now, I understand that the contention
[20] is that there is an ongoing dispute. But
[21] with every other PGW customer, any other PGW
[22] customer, if you're not paying your bill
[23] during the pendency of the dispute, you're
[24] still subject to termination. The PUC regs
[25] are clear about that. We still have to go

[1] through the notice process. So you're
[2] certainly --

[3] **THE COURT:** I understand. I am just
[4] going to stop you. I understand you're
[5] trying to be helpful, but we are going to
[6] have a hearing after Thanksgiving.

[7] But, Mr. Yanoff, I think I already
[8] said this. I mean, is it your client's
[9] contention that they don't have to pay PGW at
[10] all until these disputes are resolved?

[11] **MR. YANOFF:** Well, again, as usual,
[12] it's a two-part answer.

[13] The answer is no. We have to pay for
[14] gas service. But PGW owes us \$2 million. \$2
[15] million. And not only do we dispute the fact
[16] that they haven't paid us those refunds,
[17] which were ordered by PUC, but the meter
[18] calibration issue --

[19] **THE COURT:** Mr. Yanoff, is it your
[20] client's position that until they get up to
[21] \$2 million, they don't have to pay PGW?

[22] **MR. YANOFF:** No.

[23] **THE COURT:** Well, then, how did we
[24] get in this situation? Why isn't your -- now
[25] I have a two-part question.

[1] **Part 1:** Is your client paying bills,
[2] PGW bills, on a regular basis? Well, maybe
[3] it's just a one-part question.

[4] **MR. YANOFF:** The answer is no.
[5] Because we can't get a good reading as to
[6] what we actually owe. The numbers are so
[7] bizarrely different, as I just indicated to
[8] Your Honor, going from zero to \$700,000.
[9] That's one building. That is one building.
[10] So I would love to be able to sit down with
[11] somebody. I wouldn't do it because I can't
[12] balance my checkbook. But somebody in the
[13] accounting division of SGB Management to sit
[14] down and work out how this is supposed to be
[15] worked out. We can't get to that point.

[16] **THE COURT:** Well, you're going to do
[17] it between now and our hearing date.

[18] So, Mr. Yanoff, you're going to find
[19] someone in your organization. And, Mr. Hugg,
[20] you're to going find someone in your
[21] organization. Because, I mean, they are not
[22] saying they won't make interim payments. It
[23] just seems to me -- look, we got two good
[24] lawyers here and more. It seems to me you
[25] ought to be able to sit down together and

[1] figure out something in the interim to get us
[2] to adjudication on the underlying dispute.

[3] **MR. HUGG:** Excuse me, Your Honor.
[4] The underlying dispute being?

[5] **THE COURT:** The other case that is in
[6] front of me, I guess. All the PUC stuff.

[7] **MR. HUGG:** It is a situation, Your
[8] Honor, which promptly calls for a formal
[9] mediation.

[10] **THE COURT:** Okay.

[11] **MR. YANOFF:** First time I'm hearing
[12] that.

[13] **MR. HUGG:** Of course.

[14] **THE COURT:** I'm going away for
[15] Thanksgiving. Are you going to be around?

[16] **MR. HUGG:** I'm here.

[17] **MR. YANOFF:** My client is away until
[18] after Thanksgiving. My principal of SGB
[19] management is away. I can get him if I need
[20] him, but he is not going to be physically
[21] here.

[22] **THE COURT:** Well, again, are you
[23] saying for the whole ball of wax? Are you
[24] going to need a mediator to get us to next
[25] week?

[1] **MR. HUGG:** It probably would be a
[2] good idea, Your Honor, to have a neutral
[3] involved with this piece, and then we can
[4] perhaps build on that victory, hopefully, to
[5] try to resolve the wider dispute.

[6] **THE COURT:** All right. Well, the
[7] first thing I am going to do is see what
[8] Judge Glazer's schedule is because he's the
[9] senior judge who is working with us.

[10] Again, I am new to all of this. So
[11] if he is not available, I know I have a list
[12] of 80 JPTs.

[13] **MR. HUGG:** I have names in my head,
[14] Your Honor, who I think would be --

[15] **THE COURT:** Maybe it would be a good
[16] first step if the two of you could agree on
[17] JPTs to go to. I mean, the other way I've
[18] done it through other programs is to get
[19] names from both sides.

[20] **MR. HUGG:** But I do think this a
[21] protracted situation, which is by some
[22] accounts been dragging on for two decades.
[23] It does call for the appointment of a hard-
[24] headed neutral to force the parties to
[25] negotiate in good faith with each other. And

[1] we have this discrete issue, and hopefully
[2] that could be resolved without coming back
[3] and having a whole evidentiary hearing.

[4] But I do think, perhaps building on
[5] that, we can work through the rest of the
[6] issues and achieve some finality here.
[7] That's not going to happen by the end of next
[8] week, but perhaps as we head into the winter.
[9] I had a mediation with Judge Rizzo go on for
[10] nine months, Your Honor. We settled it.
[11] So...

[12] **THE COURT:** So, I mean, again, three
[13] days in, Judge Glazer is not going able to
[14] spend 40 hours and whatnot. So why don't you
[15] talk to each other. And I think you know how
[16] the Commerce Program works, that the first
[17] three hours are free, and then the parties
[18] have to pay the mediator at their regular
[19] rate. Or at least that is my understanding.

[20] **MR. HUGG:** Has Judge Glazer been
[21] recommissioned?

[22] **THE COURT:** He is a senior judge. He
[23] is not commissioned. He's a senior judge,
[24] and he spends a lot of his time in our
[25] program.

[1] Talk to one another. See if you can
[2] agree on a mediator. Because I actually
[3] think it would be better. If you're going to
[4] have a mediator, you might as well start with
[5] that person. If you cannot agree, you can
[6] each submit three names by 2:00 o'clock.

[7] **MR. HUGG:** Sure.

[8] **MR. YANOFF:** Is that on the JPT list,
[9] Your Honor?

[10] **THE COURT:** The list is available on
[11] the website. The JPT list that is available
[12] on the website.

[13] From my point of view, they don't
[14] have to be on the JPT website, and it's not a
[15] lot of time. It would be nice to get names
[16] of people we know would actually do it.

[17] **MR. HUGG:** Should we send those names
[18] to Ms. Packer?

[19] **THE COURT:** Yes, please.

[20] So it is fine to reach out to
[21] mediators and ask them if they are available
[22] and willing to do this, and then -- well,
[23] submit the names to each other; right? So I
[24] can find out if any of the names are
[25] objectionable to the other party. But I

[1] think we need to get a mediator on this
[2] quickly.

[3] **MR. YANOFF:** I think Your Honor put
[4] the finger right on the issue with how much
[5] time is a mediator going to be able devote to
[6] a dispute that goes back two decades.

[7] **THE COURT:** But right now the first
[8] assignment is we need a mediator who is going
[9] to try to find a solution to this interim
[10] problem of the plaintiffs are willing to pay
[11] something, but they don't agree with what PGW
[12] is charging them. And, you know, there has
[13] to be -- I mean, it seems to me there needs
[14] to be some interim resolution where SBG, et
[15] cetera, agrees to pay some amount a month,
[16] reserving the dispute on the rest until it
[17] gets adjudicated.

[18] So, for example, if PGW is charging
[19] \$100,000 a month, and SBG says no, no. We
[20] only owe \$30,000 a month, then there is going
[21] to have to be some agreement on what is going
[22] to get paid in the interim without anyone
[23] waiving their right to that disputed amount.

[24] Does that make sense?

[25] **MR. HUGG:** Yes, Your Honor.

[1] **MR. YANOFF:** Yes. I would like to
[2] remind Your Honor, we have already paid all
[3] the disputed amounts plus the recommencement
[4] fee. We've paid that already.

[5] **THE COURT:** I understand that. But
[6] what I don't want to happen is we have gotten
[7] to November 17th, and then we get to
[8] December 1st, and your client decides I am
[9] not paying again until April 1st.

[10] **MR. YANOFF:** I understand.

[11] **THE COURT:** I don't think I'm going
[12] to get Judge Glazer involved. Just talk to
[13] one another, try to agree, and give me names.
[14] Ms. Packer, is there any reason other
[15] than my jet lag that we shouldn't schedule
[16] this on Thursday after Thanksgiving? Did we
[17] schedule something else that day?

[18] **MS. PACKER:** I believe we did.

[19] **THE COURT:** Bear with me a second.

[20] **MR. YANOFF:** May I check my calendar?

[21] **THE COURT:** Yes.

[22] (Whereupon, a brief recess was
[23] taken.)

[24] **MR. YANOFF:** Tuesday maybe better. I
[25] have an argument before the Superior Court

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[1] that morning on Wednesday.
[2] **THE COURT:** I have discovery court
[3] that day.
[4] **MR. YANOFF:** I am No. 1 on the list.
[5] They told me I'm No. 1 on the list.
[6] **THE COURT:** Okay. I reconsidered it,
[7] Wednesday. It's going to be a long list
[8] because I am not having it this week.
[9] I mean, again, I know it's hard to
[10] make predictions because everybody is getting
[11] into this. But, Mr. Yanoff, how much time do
[12] you think your witness is going to take?
[13] **MR. YANOFF:** At least half a day,
[14] Your Honor.
[15] **MR. HUGG:** I can see several hours,
[16] Your Honor.
[17] **MR. YANOFF:** Can we push it to the
[18] following week, Your Honor?
[19] **THE COURT:** Not unless your client is
[20] going to pay bills through April. I mean,
[21] that's the whole point. The whole point is
[22] on December 1st we have a statutory problem
[23] **MR. YANOFF:** Well, I have spoken to
[24] my client. We understand Your Honor's
[25] comments concerning the need to pay bills and

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[1] working out a budget. I am hoping that we
[2] can resolve that between Mr. Hugg and myself.
[3] So we'll work out a budget payment.
[4] Again, we are not standing here
[5] saying we are not paying for gas bills.
[6] **THE COURT:** I know, but you filed an
[7] injunction, so unless you -- you filed a
[8] petition, so unless and until that petition
[9] gets withdrawn, I have got to deal with it.
[10] All right. Let's just do it
[11] December --
[12] **MR. HUGG:** December 1st, Your Honor.
[13] **THE COURT:** But isn't that too late?
[14] I am entering an injunction. I am
[15] setting a \$5,000 bond, and that injunction is
[16] going to be in place until this motion, this
[17] petition gets resolved.
[18] If you all want me to give you a
[19] little time now to talk about it and see if
[20] you can work something out to get us get to
[21] some date after December 1st that everyone
[22] agrees on, I'm happy to do that as well.
[23] Does that make sense?
[24] **MR. YANOFF:** Your Honor, if I may.
[25] I'm not sure, with all due respect, that

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[1] December 1st is a critical date, because PGW
[2] can't do anything after that date. And if we
[3] reach an agreement that we will pay a
[4] budgeted amount after that date until April,
[5] the injunction can stay in place because it
[6] doesn't change the status quo at all.
[7] **THE COURT:** Right, but that
[8] presupposes that you make an agreement. And
[9] if you don't make an agreement, I think I
[10] need to adjudicate your petition before
[11] December 1st unless there is some -- I mean,
[12] I don't know if you can make an agreement
[13] that's in conflict with -- I don't know if
[14] that's the statute.
[15] Or is that statutory, the
[16] December 1st --
[17] **MR. YANOFF:** Yes, it is statutory.
[18] **THE COURT:** I need an agreement that
[19] comports with the statute.
[20] **MR. YANOFF:** If Your Honor's order is
[21] that PGW, in conformance with the statute --
[22] I'm happy to comply with the statute. They
[23] can't issue shutoff notices --
[24] **THE COURT:** I think I said it about
[25] four times. I'm going to try a fifth time.

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[1] **MR. YANOFF:** My apologies, Your
[2] Honor.
[3] **THE COURT:** I am not letting your
[4] client get to December 1st without either a
[5] hearing on your petition or an agreement
[6] among the parties; is that clear?
[7] **MR. YANOFF:** Clear as a bell.
[8] **THE COURT:** So I am happy to give you
[9] two some time now and use of the courtroom to
[10] discuss that. But I am having a hearing
[11] before December 1st if there is not an
[12] agreement. So it is either going to be
[13] November 28th or November 29th, because I am
[14] going to have to at least enter the order.
[15] Also we are having a hearing, so that
[16] means witnesses and exhibits.
[17] And, Mr. Hugg, I'm intuiting that you
[18] probably want to file something responsive?
[19] **MR. HUGG:** I think we should go on
[20] the 29th, Your Honor.
[21] **MR. YANOFF:** I am No. 1 on the
[22] Superior Court's list that morning. When
[23] that is done, I can come over here.
[24] **MR. HUGG:** I do have a proceeding in
[25] the Historic Commission that morning, Your

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[1] Honor, but I can have somebody else handle
[2] that.
[3] THE COURT: We are starting 1:30 on
[4] the 29th. You can have two hours each
[5] because I have to have this in, and I have to
[6] make a decision.
[7] MR. YANOFF: Understood.
[8] THE COURT: So, you know, I will also
[9] -- I mean, it's an injunction, so you can
[10] provide things by affidavit as well. You
[11] know, you can work out authentication of
[12] documents so we don't have to spend a lot of
[13] time on that. So I think you need to
[14] exchange what -- exchange exhibits lists and
[15] witness lists by the 22nd.
[16] MR. HUGG: How about the Monday
[17] before, Your Honor?
[18] THE COURT: The 27th? Yes.
[19] I need you to file your brief before
[20] the 27th, because logistically I will be able
[21] to pick it up the 24th so that I can read it
[22] on the 27th.
[23] MR. HUGG: If I file it on the 27th,
[24] is that too late?
[25] THE COURT: Yes. I am going to be on

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[1] an airplane. Basically someone will be able
[2] to e-mail it to me on Friday the 24th. I
[3] need somebody to e-mail it to me on Friday
[4] the 24th.
[5] So you're going to give me names by
[6] 2:00 o'clock for the mediator. You are going
[7] to exchange exhibits and witness lists on
[8] Monday the 27th by noon? By 9:00 o'clock?
[9] You tell me.
[10] MR. HUGG: Witnesses by 5:00 o'clock.
[11] THE COURT: Witnesses and exhibits?
[12] MR. HUGG: Yes.
[13] THE COURT: You're going to e-mail --
[14] I will put it on the order. You're going to
[15] e-mail any exhibits that you want to use to
[16] my virtual courtroom e-mail address, which
[17] will be in the order. And the defense brief
[18] is due by 4:00 o'clock on the 24th.
[19] Actually, e-mail the brief to the virtual
[20] courtroom address. I can probably pick it up
[21] myself from that e-mail.
[22] MR. YANOFF: Your Honor, the exhibits
[23] are also due 5:00 p.m. on the 27th?
[24] THE COURT: Yes.
[25] MR. HUGG: The mediator has to be in

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[1] to Ms. Packer by 3:00 p.m.
[2] THE COURT: 3:00. You're going to
[3] talk to each here. You're going to see if
[4] you can actually agree on someone. If you
[5] can't agree on someone, you are going to
[6] exchange the lists, and you're going to let
[7] Ms. Packer know promptly if anyone has an
[8] objection to someone on the other person's
[9] list.
[10] MR. YANOFF: Understood.
[11] MR. HUGG: If you could indulge me
[12] for one moment, Your Honor.
[13] THE COURT: Yes, of course.
[14] MR. HUGG: Your Honor, could we have
[15] a 10-minute recess, just so we can get some
[16] information from PGW? We may have a
[17] proposal.
[18] THE COURT: Yes, absolutely.
[19] We are going to adjourn Court until
[20] 1:00 o'clock.
[21] THE COURT CLERK: Court stands
[22] adjourned until 1:00 p.m.
[23] (At which time, a recess was taken at
[24] 11:22 a.m.)
[25] THE COURT CLERK: This Court of Common

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[1] Pleas in not back in session, the Honorable
[2] Abbe F. Fletman is presiding.
[3] THE COURT: You maybe seated thank
[4] you.
[5] All right, how did we do?
[6] MR. YANOFF: Actually, Your Honor we
[7] did pretty well.
[8] THE COURT: Okay, good.
[9] MR. YANOFF: We reached a resolution
[10] at least through March 31st. And the
[11] resolution -- and Mr. Hugg can correct me if
[12] I'm incorrect, we will agree to a monthly
[13] payment of \$15,000 per month commencing with
[14] the next bill. That runs through the
[15] March 31, 2024, period of time.
[16] Just as an aside, the allocation of
[17] that bill with the month of the five
[18] properties needs to be resolved with PGW so
[19] we can get proper credits when that happens.
[20] We will agree to stipulate Seth Shapiro is
[21] out of this case. We can do that by filing
[22] -- either by court order or by stipulation
[23] whatever is better.
[24] Are we suspending until March 31st?
[25] Is that what we're doing here?

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[1] **THE COURT:** What is happening to the
[2] petition? Is it being withdrawn without
[3] prejudice?
[4] **MR. YANOFF:** Well, we thought maybe we
[5] would put it in suspension until March 31st.
[6] **MR. HUGG:** So, Your Honor, this will
[7] be memorialized in the agreement with default
[8] provisions. In the event a party defaults,
[9] we will request that the Court schedule a
[10] hearing.
[11] **THE COURT:** Okay, I see.
[12] **MR. HUGG:** That is what is hanging
[13] over everybody's head here is the hearing.
[14] So we are going to ask for the court to defer
[15] consideration of the motion, and meanwhile as
[16] we have discussed we are going to be
[17] mediating and this issue will, I am sure be a
[18] subject of the mediation.
[19] When we get to March 31st -- I am
[20] sure one of the issues the mediator is going
[21] to consider is the continuation of some form
[22] of agreement past March 31st.
[23] **THE COURT:** So why don't we do this.
[24] why don't we schedule a status in front of me
[25] around March 15th.

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[1] **MR. YANOFF:** That makes sense.
[2] **THE COURT:** So in our pedantic
[3] system, this petition stays on my list until
[4] it's disposed of. So I don't like to just
[5] leave things with no subsequent date because
[6] that's how they tend to get lost in the
[7] system.
[8] **MR. HUGG:** So I only ask that the
[9] Court not schedule it proximate to the Easter
[10] and Passover holidays.
[11] **THE COURT:** I am not here from
[12] March 5th to 31st. It is very exciting, I am
[13] going to be a visiting professor at the
[14] University of Sydney Law School.
[15] **MR. YANOFF:** I like that. Can I go?
[16] **THE COURT:** Absolutely.
[17] **MR. HUGG:** I was before a judge in the
[18] District of Connecticut who had that same
[19] assignment.
[20] **THE COURT:** It's a good one.
[21] I guess we better status this before
[22] I leave.
[23] **MR. HUGG:** Your Honor, why don't we
[24] status this before the end of February?
[25] **THE COURT:** That's fine.

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[1] **MR. HUGG:** And by statusing it --
[2] hopefully we will be mediating. Perhaps we
[3] don't need to do that on the record in court,
[4] but I don't know.
[5] **THE COURT:** That's fine. It is
[6] really because I just want to know what is
[7] going on and not lose track of the petition.
[8] So, unfortunately Ms. Packer is not
[9] with us right now. And, again, I have just
[10] started this assignment. I don't have my
[11] arms around what is already scheduled for me.
[12] **MR. HUGG:** Excuse me, Your Honor, in
[13] this case or globally?
[14] **THE COURT:** Globally. I don't want to
[15] schedule when I'm already scheduled. That is
[16] my problem. So I am going to leave the
[17] scheduling -- I am not going to schedule it
[18] at this moment. I guess we could schedule it
[19] tentatively.
[20] **MR. HUGG:** The week of February 19th
[21] and 26th I am relatively clear. Both the
[22] weeks of February 19th and February 26th as
[23] of now I'm clear.
[24] **THE COURT:** You're clear.
[25] Mr. Yanoff?

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[1] **MR. YANOFF:** On the 20th we have a PUC
[2] matter. There is a hearing in this case at
[3] PUC on February 20th.
[4] **THE COURT:** So would you rather have
[5] it after that because you'd be prepping for
[6] it before?
[7] **MR. YANOFF:** Yes.
[8] **THE COURT:** Is that a one day thing or
[9] is that a multi day?
[10] **MR. YANOFF:** It appears to be one day.
[11] **THE COURT:** How is February 27th?
[12] **MR. YANOFF:** I'm okay that day.
[13] **THE COURT:** 10 o'clock.
[14] **MR. HUGG:** What courtroom, Your Honor?
[15] **THE COURT:** By then I will probably be
[16] in courtroom 630. So just again, if there is
[17] a conflict someone will be in touch with you
[18] to reschedule. We'll aim for a week.
[19] And so, I guess, I don't need to
[20] put anything on the record. We will just
[21] enter a scheduling order scheduling a status
[22] conference on that date in February.
[23] **MR. YANOFF:** Are we holding the
[24] preliminary injunction in abeyance or do we
[25] need to post the bond?

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[1] **THE COURT:** No, because I'm not
[2] entering -- I had an order but I am not going
[3] to enter it.
[4] **MR. HUGG:** Fine.
[5] **THE COURT:** Well, let me ask you a
[6] question, have you reached an agreement? Do
[7] I need to enter an injunction order?
[8] **MR. YANOFF:** Well, the only thing I
[9] want to make sure is that PGW agrees that
[10] service will be restored today.
[11] **THE COURT:** If you want an injunction
[12] you're going to have to post a bond. So I
[13] guess I suppose it comes down to whether it's
[14] an issue of trust.
[15] **MR. HUGG:** Your Honor, what would be
[16] enjoined?
[17] **THE COURT:** It would be an injunction
[18] requiring PGW to turn the gas on by 10 p.m.
[19] tonight.
[20] **MR. HUGG:** Your Honor, I have an
[21] update on that.
[22] **THE COURT:** Okay.
[23] **MS. CHRISTLIEB:** Good afternoon, Your
[24] Honor.
[25] I have received an update with

[1] respect to restoration, all of the properties
[2] will be restored tonight except 1632
[3] Cheltenham Avenue. That's just due to
[4] staffing -- basically one of the other
[5] properties, the 7th Street property required
[6] extra crews. There is extensive digging and
[7] excavation that is being done there. So it's
[8] a manpower issue. But we will be able to get
[9] the 1623 Cheltenham on as of tomorrow
[10] morning. So it's the first one on the
[11] schedule for tomorrow for restoration, which
[12] still puts us in the 72 hours allocated under
[13] the Public Utility Commission regs for
[14] restoration after payment.
[15] **THE COURT:** Okay.
[16] Well, I guess Mr. Yanoff are you
[17] requesting that I enter an injunction order?
[18] **MR. YANOFF:** My client says, yes. Not
[19] that I don't trust them, but I need to make
[20] sure that I have some enforcement ability.
[21] **THE COURT:** I understand. Well, and
[22] it's also complicated by the fact that you
[23] can't run back to me next week because I am
[24] not here.
[25] **MR. YANOFF:** Right.

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[1] **MR. HUGG:** Your Honor, if Your Honor
[2] is inclined to enter an order what is the
[3] order Your Honor?
[4] **THE COURT:** You'll see it when it
[5] hits the docket.
[6] **MR. HUGG:** It is physically
[7] impossible to get the gas turned on --
[8] **THE COURT:** I understand. I will give
[9] you until noon tomorrow.
[10] **MS. CHRISTLIEB:** Your Honor, let me
[11] just check to see if that's possible.
[12] **THE COURT:** Well, if I order it, it
[13] better be possible.
[14] **MS. CHRISTLIEB:** Understood.
[15] **THE COURT:** If you want to check, go
[16] ahead.
[17] **MS. CHRISTLIEB:** But I do have a
[18] supervisor --
[19] **THE COURT:** Sure, go ahead.
[20] **MS. CHRISTLIEB:** PGW will have all of
[21] the gas restored by noon tomorrow. So the
[22] Cheltenham property, we are still working on
[23] it. We will continue to work on it. The hope
[24] is to have it on tonight. However, it will be
[25] addressed, if not starting first thing again

[1] tomorrow morning and it will be on by noon.
[2] **THE COURT:** Okay. You will post the
[3] bond by 10 or 11? Under the rules you have
[4] got to post a bond before the injunction is
[5] effective.
[6] **MR. YANOFF:** Will there be somebody
[7] available for us to post the bond?
[8] **THE COURT:** At the Office of Judicial
[9] Records.
[10] **MR. YANOFF:** Tomorrow?
[11] **THE COURT:** Post it by 5 o'clock
[12] today.
[13] **MR. YANOFF:** We have to bring a check
[14] into the Office of Judicial Records, we have
[15] to get somebody to run the check down by
[16] 5 o'clock today.
[17] **THE COURT:** I'm sorry. I forgot what
[18] day it was.
[19] Thank you for working this out.
[20] What is going on with the mediator?
[21] Have you talked?
[22] **MR. HUGG:** Before we get to that,
[23] Your Honor, should we submit a form of order
[24] to Your Honor regarding the interim payments?
[25] **MR. YANOFF:** That is part of this

[1] order.
[2] **MR. HUGG:** A separate order.
[3] **THE COURT:** If you want it on the
[4] record, you should submit an order yes.
[5] **MR. HUGG:** So we have the injunction
[6] order, and we have an order for payments.
[7] **THE COURT:** It's basically a
[8] stipulation.
[9] **MR. HUGG:** Yes, it is.
[10] **THE COURT:** If you want it to be of
[11] record then, yes.
[12] **MR. HUGG:** We'll submit -- we will
[13] put together an order by the close of
[14] business on Monday and submit it. Your Honor
[15] will be out of town so...
[16] **THE COURT:** I will,
[17] **MR. HUGG:** It doesn't need to be
[18] issued immediately. The first payment will
[19] be due before December 1st.
[20] **THE COURT:** Yes. If it's important to
[21] you that it be an order of the Court I am
[22] sure I can find another Judge to sign it. It
[23] is just I will be out of the country and I
[24] don't want to get into do I have the power to
[25] enter an order in Philadelphia when I am

[1] **MR. YANOFF:** Well, I honestly have not
[2] heard whether he agreed to any of mine at
[3] all. So maybe I have one on mine that he is
[4] willing to agree to.
[5] **MR. HUGG:** I wouldn't dismiss all of
[6] these out of hand, Your Honor. I would like
[7] to consult with another person in my law firm
[8] first because I probably won't be directly
[9] handling the mediation.
[10] **MR. YANOFF:** Can we postpone that
[11] 'till Monday and give us a chance to talk and
[12] consider these people?
[13] **THE COURT:** That's fine. I mean, if we
[14] we're going to have a mediation before
[15] December 1st it is not quite as time
[16] sensitive as it was.
[17] **MR. HUGG:** I would think it would be
[18] prudent on the injunction order to have a
[19] line requiring us to either by agreement or
[20] submit the names to Ms. Packer by a day or
[21] early next week.
[22] **MR. YANOFF:** That works for me Your
[23] Honor.
[24] **THE COURT:** Is there anything else I
[25] need to say on the record?

[1] actually somewhere else.
[2] **MR. HUGG:** I understand Your Honor.
[3] We will submit a form of order by the
[4] close of business on Monday.
[5] **THE COURT:** But understanding it
[6] won't get signed.
[7] **MR. HUGG:** Maybe it will go over to
[8] Tuesday then you will get a formative order.
[9] **THE COURT:** I will deal with it as
[10] soon as I'm back.
[11] **MR. HUGG:** As for the mediators. We
[12] have exchanged lists of mediators.
[13] **MR. YANOFF:** We have.
[14] **THE COURT:** That's pretty good.
[15] And have you struck mediators on each
[16] other's list?
[17] **MR. YANOFF:** Well, I haven't agreed to
[18] any of the mediators on his list, and I
[19] haven't heard back from him on his response
[20] to mine.
[21] **THE COURT:** Well to me there is a
[22] difference between not agreeing and striking.
[23] **MR. YANOFF:** Well, for purposes of the
[24] record I'm striking all of his.
[25] **THE COURT:** Come on, Mr. Yanoff.

[1] **MR. YANOFF:** I don't believe so,
[2] Your Honor.
[3] **MS. CHRISTLIEB:** No, Your Honor.
[4] **MR. HUGG:** We are going to include in
[5] the stipulation, which are going to submit
[6] regarding payment a date certain for each
[7] month for payment. We will also include an
[8] address for payment and as much information
[9] as is necessary so that nothing falls between
[10] the cracks. And we need to include ACH
[11] information, we're going to try to make this
[12] as seamless as possible.
[13] **THE COURT:** Good. Does that work for
[14] you?
[15] **MR. YANOFF:** Absolutely does, Your
[16] Honor.
[17] **MR. HUGG:** If Your Honor, could see to
[18] it that the injunction order is docketed
[19] today?
[20] **THE COURT:** Oh, don't you worry. As
[21] soon as leave I am personally walking it to
[22] the person who docket's it.
[23] **MR. HUGG:** And when the stipulation is
[24] filed that too is promptly docketed right
[25] after Your Honor signs it?

[1] **THE COURT:** Yes.
[2] **MR. HUGG:** Thank you.
[3] **THE COURT:** Okay bear with me one
[4] second.
[5] So are we good to end court?
[6] **MR. YANOFF:** Your Honor, thank very
[7] much for your time.
[8] **MR. HUGG:** Yes.
[9] **THE CLERK:** That concludes the
[10] Court's business. Court stands adjourned
[11] until the call of the crier.
[12] (At which time, this matter was
[13] concluded.)
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[3] **CERTIFICATE**
[4]
[5] I, MONIKA NEMEC, Certified Court Reporter do
[6] hereby swear that the foregoing is a true and
[7] accurate record of the testimony taken
[8] stenographically by me; and I am neither attorney
[9] nor counsel for nor related to or employed by any of
[10] the parties to the action in which this matter is
[11] taken; and further, that I am not a relative or
[12] employee of any attorney or counsel employed by the
[13] parties hereto, or financially interested in the
[14] action.

[15]
[16]
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[18]
[19] **MONIKA NEMEC**
[20] **CERTIFIED COURT REPORTER**
[21]
[22]
[23]
[24]
[25]

Court Reporting System (Generated 2024/05/16 15:16:05)

First Judicial District of Pennsylvania

231101740

Sbg Management Services V. Phila. Gasworks, Et Al.

*Hearing Volume 1
February 27, 2024*



*First Judicial District of Pennsylvania
100 South Broad Street, Second Floor
Philadelphia, PA 19110
(215) 683-8000 FAX:(215) 683-8005*

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[1] IN THE COURT OF COMMON PLEAS
[2] FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
[3] CIVIL DIVISION
[4] ---
[5] **SBG MANAGEMENT SERVICES,:**
INC., et al :
[6] :
vs. :
[7] : NO. 231101740
PHILADELPHIA GAS WORKS, :
[8] et al :
[9] ---
[10] Tuesday, February 27, 2024
City Hall, Courtroom 630
Philadelphia, Pennsylvania
[11] ---
[12] **B E F O R E:**
[13] THE HONORABLE ABBE F. FLETMAN, J.
[14] ---
[15] ---
[16] ---
[17] Reported by: Stephanie Goffredo, RPR
Official Court Reporter

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[1] **A P P E A R A N C E S:**
[2] GOLDSTEIN LAW PARTNERS, LLC
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[4]
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[6] ECKERT SEAMANS CHERIN & MELLOTT, LLC
BY: JONATHAN W. HUGG, ESQUIRE
[7] Two Liberty Place
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[8] Philadelphia, PA 19102
[9] Attorney for Defendants
[10]
[11] **ALSO PRESENT:**
[12] Sarah D. Boutros, Esquire
[13] Daniel Clearfield, Esquire
[14] Shawn M. Rodgers, Esquire
[15] Garciella Christlieb
[16] David Chanin, Esquire
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Pitt & Associates vs. Mitts Law, LLC, et al
[1] ---
[2] **MR. HUGG:** Good morning, Your Honor.
[3] Jonathan Hugg for the defense and with me Sarah
[4] Boutros -- my colleague Sarah Boutros and
[5] Daniel Clearfield, also present -- could you
[6] stand and introduce yourself?
[7] **MS. CHRISTLIEB:** Good morning, Your Honor.
[8] Garciella Christlieb with the Philadelphia Gas
[9] Works.
[10] **THE COURT:** All right. Good morning,
[11] everyone.
[12] Now, we can have the plaintiffs put their
[13] appearance on the record.
[14] **MR. YANOFF:** Thank you, Your Honor.
[15] Michael Yanoff here for the plaintiffs, along
[16] with Shawn Rodgers who's with me.
[17] **MR. RODGERS:** Good morning, Your Honor.
[18] **MR. CHANIN:** David Chanin. I've been
[19] engaged as mediator.
[20] **THE COURT:** All right. Good morning to
[21] you as well. Okay. So we're here today to see
[22] where we are. When we were last here was an
[23] injunction hearing in November and I entered an
[24] order. I got -- I think I got one status
[25] report in the interim.

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[1] I'll start with you, Mr. Yanoff. What's
[2] going on? Again, I know that you were -- the
[3] parties were going to go to mediation, so where
[4] are we?

[5] **MR. YANOFF:** We are moving forward to
[6] mediation. That's why Mr. Chanin is here.
[7] Obviously, we haven't scheduled a date yet, but
[8] we're setting the parameters for that.
[9] Mr. Chanin has been very instrumental in
[10] putting the parties' heads together to see how
[11] to streamline and make this mediation work in
[12] this complex case. With respect to the
[13] pleadings, there is a second amended complaint
[14] that's been filed.

[15] **THE COURT:** I'm aware of the motion.

[16] **MR. YANOFF:** Okay. The motion of
[17] transfer, yes, Your Honor.

[18] With respect to the original stipulation,
[19] the original stipulation was not signed,
[20] because there was a disagreement about the
[21] dates of payment and the allocation of the
[22] payment. However, all the payments have been
[23] made on the 15th of every month. We have an
[24] open issue as to going forward through the
[25] mediation period as to what amounts would be

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[1] months, so we have suggested an amount, we were
[2] waiting for Mr. Bach to come back to us with
[3] some sort of counterproposal, he has not yet
[4] done so, but that's essentially where we are,
[5] but we're hoping that we have a stipulation
[6] going forward so we're not back before Your
[7] Honor on another shut-off situation.

[8] **THE COURT:** Well, this is -- this is why I
[9] wanted to see you, because, as you may recall,
[10] I'm out of the country for most of March, so I
[11] want to make sure that there is no emergency
[12] between March 5th and March 31st.

[13] **MR. YANOFF:** Well, we would like to see
[14] that also, Your Honor, so that's -- one of the
[15] things I thought we had hoped we were going to
[16] discuss here today is extending that --

[17] **THE COURT:** Okay.

[18] **MR. YANOFF:** -- so far unsigned
[19] stipulation, but so far adhered to stipulation.

[20] **THE COURT:** All right. Mr. Hugg.

[21] **MR. HUGG:** Good morning, Your Honor. May
[22] I sit and speak into the --

[23] **THE COURT:** Yes.

[24] **MR. HUGG:** Thank you, Your Honor.

[25] Your Honor, the defense has a somewhat

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[1] paid, but that is essentially where we are.

[2] **THE COURT:** Okay. I brilliantly brought
[3] the wrong file.

[4] What's going on with the status quo? Do
[5] the people in the building have gas?

[6] **MR. YANOFF:** Yes, Your Honor.

[7] **THE COURT:** And is there some commitment
[8] that that's going to continue -- you know, that
[9] that will be the status quo while the mediation
[10] process happens?

[11] **MR. YANOFF:** Well, that's part of the
[12] discussion for the extension of the
[13] stipulation, Your Honor. The stipulation
[14] covered a very limited period, as Your Honor
[15] will recall, that ends March 31st, and
[16] Mr. Bach, who is not here, who is also
[17] representing PGW, and I have been discussing
[18] the possibility of extending that stipulation
[19] through the non-heating season at a lesser
[20] amount than the \$15,000 a month in order to
[21] ensure that gas service continues to be
[22] provided.

[23] Obviously, the amount of gas expended and
[24] used during the non-heating months is
[25] significantly less than during the heating

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[1] different view of the situation.

[2] **THE COURT:** I'm sorry. Can you -- I
[3] managed to pick up the wrong file on my way
[4] over here, so can you give me the case number?

[5] **MR. HUGG:** Yes, Your Honor. It is
[6] 231101740.

[7] **THE COURT:** Okay. So the only order or
[8] agreement that is governing this case is the
[9] order that I entered in November; is that
[10] right?

[11] **MR. HUGG:** That's correct, Your Honor.

[12] **THE COURT:** And that expires on --

[13] **MR. HUGG:** The 31st of March.

[14] **THE COURT:** March 31st?

[15] **MR. HUGG:** Yes.

[16] **THE COURT:** Well, I'll be back April 1st.

[17] **MR. HUGG:** May I, Your Honor?

[18] **THE COURT:** Yes. Go ahead, Mr. Hugg.

[19] **MR. HUGG:** Your Honor, first of all, it
[20] was represented at the November hearing on the
[21] record that plaintiffs would dismiss Seth
[22] Shapiro, that was on the record, that has not
[23] occurred, so I wanted to bring that to the
[24] Court's attention, for whatever reason that
[25] promise was not performed.

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[1] Also, while it is true that SBG has made
[2] payments, the timing of the payments -- when
[3] they're actually received by PGW -- is after
[4] the agreed deadline. Those are two, perhaps,
[5] minor points, which have --

[6] **THE COURT:** How much after the deadline?

[7] **MR. HUGG:** A day or two, Your Honor, yet,
[8] Your Honor, the problem is when payments are
[9] late, the costs -- it creates an administrative
[10] cost, but PGW also views it as not comporting
[11] with the parties' agreement.

[12] **THE COURT:** Well, I'm told that there
[13] isn't any agreement. The stipulation hasn't
[14] been signed.

[15] **MR. HUGG:** There is no formal agreement,
[16] yes, Your Honor, but there has been a practice
[17] where it is true SBG has paid 15,000 a month
[18] after when it was represented to us we would
[19] receive the money at the conference and even
[20] after they represented we would receive the
[21] money after -- post conference, Your Honor. I'm
[22] advised by Mr. Bach that the mediation seems to
[23] be at an impasse.

[24] **THE COURT:** Okay. Has the mediation --
[25] has it started? Have there been mediation

Pitt & Associates vs. Mitts Law, LLC, et al
[1] meetings?

[2] **MR. HUGG:** My understanding, Your Honor --

[3] **THE COURT:** Well, I'll ask the mediator.
[4] Have you met?

[5] **MR. CHANIN:** May I also sit, Your Honor?

[6] **THE COURT:** Yes, you may.

[7] **MR. CHANIN:** We had a preliminary meeting
[8] about protocol and I've had individual
[9] substantial conference but separately with the
[10] counsel.

[11] **THE COURT:** Okay. I don't want to hear
[12] anything about substance and, also,
[13] particularly because we are on the record, when
[14] do you think you're going to have, you know, a
[15] substantive meeting with all the parties there?

[16] **MR. CHANIN:** My plan is to continue
[17] conferencing separately with counsel through --
[18] probably through March, and dates have been
[19] proposed for a mediation meeting with the
[20] parties in person, and I think now we're
[21] looking at mid-April due to people's schedules,
[22] possibly even late April, but that's a
[23] scheduling issue.

[24] **THE COURT:** Okay.

[25] **MR. HUGG:** Notwithstanding that, Your

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[1] Honor, PGW does believe the mediation is at an
[2] impasse. They're for substantive reasons that
[3] we shouldn't be discussing on the record.

[4] PGW requests, Your Honor, that the Court
[5] rule on the transfer motion, which is, as Your
[6] Honor knows, ripe for a decision.

[7] **THE COURT:** What happens if the Court
[8] denies that motion?

[9] **MR. HUGG:** Well, Your Honor, the Court
[10] should schedule -- should set a schedule for
[11] the resolution of the injunction motion,
[12] including a briefing schedule, a discovery
[13] schedule, and a hearing date when Your Honor
[14] returns. We -- fundamentally, Your Honor, it
[15] doesn't seem like we are being -- we have a
[16] view of how the mediation is progressing, which
[17] is considerably at odds with what plaintiff has
[18] represented to the Court, and we'd like to
[19] either have the case transferred or, Your
[20] Honor, failing that proceed with the injunction
[21] motion.

[22] **THE COURT:** Well, is there any reason for
[23] me not to extend my order until we have an
[24] injunction hearing -- my order of November 17?

[25] **MR. HUGG:** Insofar as Your Honor is aware,

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[1] there is a procedure that PGW has to follow in
[2] order to turn gas off. There's a 37-day notice
[3] period initially and a 30-day notice period
[4] after that. As of today, Your Honor, none of
[5] those notices have issued. So if we were to
[6] begin today, Your Honor, there would be no
[7] possibility of shutoff before Your Honor
[8] returned, but, Your Honor, if the question is
[9] should you extend the freeze until the
[10] mediation is over, then there needs to be an
[11] end date.

[12] **THE COURT:** It's not until the mediation
[13] is over. It's till -- you're telling me --
[14] what I've heard from you -- and, unfortunately,
[15] the person who's actually engaged in the
[16] mediation isn't here to report to the Court,
[17] but what I've heard from you is PGW thinks that
[18] you're at an impasse in the mediation.

[19] What I heard from the mediator, he is
[20] continuing to have meetings with an object of
[21] having an actual mediation in April, and, I
[22] mean, I know I have this fully briefed motion
[23] in front of me, which I'm perfectly willing to
[24] rule on before I go --

[25] **MR. HUGG:** There will also be preliminary

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[1] objections that will be ripe when Your Honor
[2] returns as well. We filed preliminary
[3] objections to the secondary amended complaint.
[4] They're in the cue --

[5] **THE COURT:** Wasn't it also on
[6] jurisdiction?

[7] **MR. HUGG:** There were a couple other
[8] points, Your Honor, yes, but, yes, it was
[9] mostly --

[10] **THE COURT:** If I deny the motion to
[11] transfer, most of the POs are going to be moot?

[12] **MR. HUGG:** Yes.

[13] **THE COURT:** Okay.

[14] **MR. YANOFF:** Your Honor, may I address
[15] several of the points raised by Mr. Hugg?

[16] **THE COURT:** Yes, please.

[17] **MR. YANOFF:** Thank you. In the first
[18] instance, I'm going to represent as an officer
[19] of the Court that payments have been made in a
[20] timely manner. Administratively, PGW always
[21] takes several days to log those payments into
[22] the appropriate accounts.

[23] I realize Mr. Hugg didn't tell me he was
[24] going to raise this, but if I realized that was
[25] an issue, I would have had the individual in

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[1] our office who's responsible to make those
[2] payments here with the appropriate
[3] documentation to show that the payments have
[4] been made, so any representation that the
[5] payments are not made timely, we expressly and
[6] emphatically deny.

[7] **THE COURT:** All right. I hear you. I'm
[8] not very concerned about a day or two any way.

[9] **MR. YANOFF:** But I am, Your Honor, and I
[10] ordered in my office that they be made in a
[11] timely manner so we wouldn't have this issue,
[12] but that goes to the side.

[13] **THE COURT:** What about Mr. Shapiro?

[14] **MR. YANOFF:** With respect to Mr. Shapiro,
[15] it is our understanding that when the
[16] stipulation was signed and the agreement was
[17] made, we would dismiss the case against
[18] Mr. Shapiro, and the second amended complaint
[19] actually adds certain information with respect
[20] to Mr. Shapiro that may mandate his requirement
[21] to be in the -- still in the matter. However,
[22] when we get a stipulation, I am -- I'm happy to
[23] remove Mr. Shapiro from the litigation so we
[24] can move forward.

[25] **THE COURT:** What's the issue with the

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[1] stipulation?
[2] **MR. YANOFF:** There are two issues with the
[3] stipulation. One is allocation of the
[4] payments, how PGW would allocate it, but, more
[5] importantly, PGW's version of the stipulation
[6] required a payment by the first day of every
[7] month, we've been paying by the 15th of every
[8] month, and that is what is at an impasse. I
[9] have not got any response from Mr. Hugg other
[10] than, "no", with respect to the date issue.

[11] **THE COURT:** All right. Mr. Hugg, what's
[12] the issue with the date?

[13] **MR. HUGG:** The issue with the dates, Your
[14] Honor, as it is with all things, is that we
[15] have one representation from plaintiff while
[16] we're in court, while we're in the hallway
[17] outside court, we leave, and it changes. It
[18] was represented to us on November 17 by Mr.
[19] Yanoff with his client that the payments would
[20] be at the first of the month. That shifted
[21] after the hearing. Moreover --

[22] **THE COURT:** Okay. What difference does it
[23] make to PGW if you're getting the payments on
[24] the first or the 15th, as long as you're
[25] getting them?

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[1] **MR. HUGG:** Two things, Your Honor, good
[2] faith, and, second, every other customer has to
[3] pay on the first. Customers who are much less
[4] well heal than Mr. Yanoff's clients. That's
[5] the problem here is that everybody is paying
[6] his or her gas bill however poor, except for
[7] Mr. Yanoff's clients, and we're at an impasse
[8] going forward, because the position is that
[9] there should be yet another discount. We're
[10] not even receiving the full payments, Your
[11] Honor.

[12] **THE COURT:** Okay. I'm sorry. Mr. Yanoff,
[13] did you want to say something else?

[14] **MR. YANOFF:** There was one other point,
[15] Your Honor, and that is, unfortunately, as Your
[16] Honor's indicated, Mr. Bach is not here. I've
[17] been having direct conversations with Mr. Bach
[18] about the mediation process and I concur with
[19] Mr. Chanin's statement with respect to the fact
[20] that it's actually moving forward. I'm unaware
[21] of any impasse. I haven't heard of any issues
[22] that presented an insurmountable impasse or any
[23] kind of impasse. As far as I'm concerned, the
[24] only thing left is to schedule the meeting that
[25] Mr. Chanin has indicated that it is merely a

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[1] scheduling issue.

[2] **MR. HUGG:** If I may speak to that, Your
[3] Honor?

[4] **THE COURT:** Mr. Hugg, do not interrupt.

[5] **MR. HUGG:** Yes, Your Honor.

[6] **THE COURT:** Go ahead.

[7] **MR. YANOFF:** So, once again, Your Honor,
[8] I'm not aware of anything that would interfere
[9] with the ability to move the mediation forward
[10] and we're ready to move to the next step, which
[11] is under the direction of the mediator, so I'm
[12] not sure what Mr. Hugg is speaking about.
[13] Mr. Hugg is not part of my discussions with
[14] Mr. Bach, so I don't know what he's being told,
[15] but I can tell you that my conversations with
[16] Mr. Bach don't sound anything like what
[17] Mr. Hugg has just indicated to the Court.

[18] **THE COURT:** So what are you suggesting
[19] that we do? I guess nobody is asking me for a
[20] stay, so why shouldn't I schedule -- put --
[21] schedule a briefing, schedule an argument on
[22] the injunction, because I do find that when
[23] lawyers have hearings and trial dates, it tends
[24] to focus them on the problem.

[25] **MR. YANOFF:** And well said, Your Honor.

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[1] and it does, which is one of the reasons --

[2] **THE COURT:** I'm not saying you're not
[3] focused, but it gives a deadline.

[4] **MR. YANOFF:** I take it as a general
[5] statement, Your Honor, and I understand that.
[6] My understanding is that a stay was discussed
[7] with the Court on the motions for summary
[8] judgment, which is still outstanding, and
[9] Mr. Chanin can speak to this, but my
[10] understanding is that the Court indicated that
[11] a stay would not be granted.

[12] **THE COURT:** So there's a summary judgment
[13] motion pending -- how could there be a summary
[14] judgment motion pending when there's a second
[15] amended complaint with preliminary objections?
[16] Don't the rules --

[17] **MR. YANOFF:** Procedurally that might
[18] present a problem, but there is -- on the
[19] docket -- an outstanding motion for summary
[20] judgment.

[21] **THE COURT:** Well, I think I'm probably
[22] going to dismiss that as premature. Whose
[23] summary judgment motion?

[24] **MR. YANOFF:** PGW's.

[25] **MR. HUGG:** Your Honor --

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[1] **THE COURT:** Okay. Mr. Hugg, you will get
[2] a chance.

[3] **MR. YANOFF:** I'm sorry, Your Honor. There
[4] are two -- I misspoke. There are two cases
[5] here and the summary judgment is on the other
[6] case. I misspoke on that, Your Honor, and I
[7] apologize.

[8] **THE COURT:** No, no, that's okay. What's
[9] the other case?

[10] **MR. RODGERS:** There's two docket numbers
[11] and there was an original case in the Common
[12] Pleas Court, that's where the summary judgment
[13] motion is pending. This case -- I mean, at
[14] least for the hearing today -- is regarding the
[15] injunction motion, which is a separate docket
[16] number.

[17] **MR. YANOFF:** It's really all the same
[18] parties, Your Honor.

[19] **THE COURT:** Do the complaints state the
[20] same causes of action in the two cases?

[21] **MR. RODGERS:** No, Your Honor.

[22] **THE COURT:** So what cause of action is
[23] stated in the case with the summary judgment
[24] motion?

[25] **MR. RODGERS:** That would be the case for

Pitt & Associates vs. Mitts Law, LLC, et al

[1] breach of contracts and quantum merit, unjust
[2] enrichment.

[3] **THE COURT:** Okay. And they're not
[4] consolidated or coordinated or anything like
[5] that?

[6] **MR. RODGERS:** I don't believe they are at
[7] this point.

[8] **THE COURT:** Okay. And what's the docket
[9] number on the other case?

[10] **MR. RODGERS:** They're considered related,
[11] but not consolidated.

[12] **THE COURT:** Okay.

[13] **THE LAW CLERK:** That's the coordination.

[14] **THE COURT:** I figured that. Can you give
[15] me the case number on the other case?

[16] **MR. HUGG:** I don't have that.

[17] **THE COURT:** Is the second case also part
[18] of the mediation or it's not part of the
[19] mediation?

[20] **MR. YANOFF:** The mediation was intended to
[21] be a global resolution of all matters,
[22] including the PUC matter.

[23] **THE COURT:** Okay. The other case with the
[24] summary judgment motion, is that -- that's not
[25] stayed, correct? It just has a summary

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[1] judgment motion that is sitting out there?

[2] **MR. YANOFF:** Correct.

[3] **MR. RODGERS:** If I could interject with
[4] the case number?

[5] **THE COURT:** That would be good. Thank
[6] you.

[7] **MR. RODGERS:** I believe it's 210402801.
[8] Is that right?

[9] **THE COURT:** Okay. So back to this case --

[10] **MR. YANOFF:** Your Honor asked a question:
[11] What should we do at this particular point?

[12] **THE COURT:** Yes.

[13] **MR. YANOFF:** With all due respect, my
[14] suggestion is that we extend the stipulation
[15] with a revised amount of monthly payments to
[16] reflect the fact that we're coming into a
[17] non-heating season for a defined period of
[18] time, so, once again, our feet are to the fire
[19] with respect to this issue, and then proceed
[20] with the mediation in an attempt to have a
[21] global resolution of all matters, including the
[22] PUC matter.

[23] **THE COURT:** Well, my order doesn't have
[24] anything about payments, so if I extend it, I'm
[25] just going to extend that the gas has to stay

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[1] on until this is resolved.

[2] **MR. YANOFF:** That's fine, Your Honor.

[3] Your order doesn't reference that. The
[4] stipulation was designed to --

[5] **THE COURT:** Yes, but there's no
[6] stipulation.

[7] **MR. YANOFF:** I agree, Your Honor. I
[8] agree.

[9] **THE COURT:** All right. Mr. Hugg.

[10] **MR. HUGG:** Your Honor, we gave two dates
[11] for an in-person mediation. Mr. Bach has very
[12] limited availability in April. We gave
[13] dates --

[14] **THE COURT:** Then get someone else to meet.

[15] **MR. HUGG:** We'll do, Your Honor --

[16] **THE COURT:** It's a big firm. You've got a
[17] lot of lawyers.

[18] **MR. HUGG:** Very good, Your Honor.

[19] **THE COURT:** Because I'm going to set a
[20] briefing schedule and I'm going to schedule an
[21] injunction hearing, and you just better get
[22] this mediation done before then if you don't
[23] want to have to go through with that, and I am
[24] going to extend this injunction so PGW will not
[25] do anything to cut this gas off, and if you

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[1] can't make an agreement with opposing counsel
[2] on payments, it's on you.

[3] **MR. HUGG:** So if I understand, Your Honor,
[4] the order that Your Honor is contemplating will
[5] allow SBG to use gas without payment until --

[6] **THE COURT:** No, the two of you are
[7] supposed to reach agreement on that, so sit
[8] down and reach agreement on it and don't bring
[9] picky things to me like payments are one day
[10] off and you can't agree to accept things on the
[11] 15 instead of the First and don't come here
[12] reporting on somebody else who's involved and
[13] not here to report to me.

[14] So, Mr. Yanoff, do you need further
[15] briefing?

[16] **MR. YANOFF:** We filed a brief with our
[17] response to the motion, Your Honor.

[18] **THE COURT:** Okay. So on the pending
[19] injunction motion, you don't need to file any
[20] more briefs?

[21] **MR. YANOFF:** I'm sorry. On the motion,
[22] no, I think we need to. I thought you meant on
[23] the petition to transfer.

[24] **THE COURT:** No, no, no, petition to
[25] transfer, no.

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[1] **MR. YANOFF:** Okay. We would need some
[2] additional briefing time on the preliminary
[3] objections, Your Honor.

[4] **THE COURT:** I'm talking about the
[5] injunction hearing. We've had a hearing on a
[6] special injunction. Procedurally, don't I have
[7] to have an injunction hearing?

[8] **MR. YANOFF:** I would think you would, Your
[9] Honor. We filed a brief with the injunction
[10] request, Your Honor, with the actual petition.
[11] I'd like to have a day just to refresh my
[12] recollection on that -- it goes back to
[13] November -- just to make sure, and I could
[14] advise the Court by letter or email immediately
[15] whether we need additional briefing, but I'd
[16] just like to look at that again.

[17] **THE COURT:** All right. Mr. Hugg, do you
[18] want to file more briefs on this outstanding
[19] injunction?

[20] **MR. HUGG:** I haven't filed any briefs on
[21] this outstanding injunction. Your Honor, we're
[22] holding this in abeyance until we set a
[23] schedule.

[24] **THE COURT:** I see.

[25] **MR. HUGG:** As Your Honor is away, thinking

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[1] this over, I propose that we have our brief due
[2] on the 22nd or a reply would be due --

[3] **THE COURT:** Wait, wait. Brief due on the
[4] 22nd of March --

[5] **MR. HUGG:** Of March.

[6] **THE COURT:** -- okay.

[7] **MR. HUGG:** A reply due the following
[8] Friday and a hearing sometime in April.

[9] **THE COURT:** I'm not going to have a
[10] hearing in April, because I'm going to let the
[11] mediation happen in April.

[12] **MR. HUGG:** Okay. Understood. So may we
[13] have until the end of March to brief and then
[14] Mr. Chanin would have some period after that?
[15] That last week is -- that's coming on to Easter
[16] and possibly Passover.

[17] **THE COURT:** Just bear with me. Actually,
[18] the first night of Passover is April 22nd.

[19] **MR. HUGG:** Okay.

[20] **THE COURT:** So and I think -- yes, so Good
[21] Friday is March 29 and Easter Sunday is
[22] March 31st, so why don't we make --

[23] **MR. YANOFF:** Before Your Honor puts a date
[24] on it, may I just advise the Court I have a
[25] vacation planned from May 1st to May 12th, so I

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[1] **MR. HUGG:** Probably about the same.

[2] **THE COURT:** Is this something we can do in
[3] a day or does it need more than a day?

[4] **MR. HUGG:** I think it would be advisable
[5] to put it down for two, but I think the
[6] likelihood is we would probably do it in one.
[7] On November 17 we were talking about doing this
[8] in four hours.

[9] **THE COURT:** I think I was smarter then,
[10] then I am now.

[11] **MR. HUGG:** I don't know, Your Honor.

[12] **THE COURT:** Okay. All right. What about
[13] May 21st and 22nd?

[14] **MR. YANOFF:** May I take out my phone?

[15] **THE COURT:** Yes, you may.

[16] **MR. YANOFF:** Those days are fine with me,
[17] Your Honor.

[18] **MR. HUGG:** They're fine for me, Your
[19] Honor. So May 21st and 22nd?

[20] **THE COURT:** Yes.

[21] Mr. Yanoff, do you need more than two
[22] weeks to do a reply brief if you're going to do
[23] one?

[24] **MR. YANOFF:** No, Your Honor.

[25] **THE COURT:** All right. How about if the

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[1] just want to let the Court know that.

[2] **THE COURT:** Okay. Thank you.

[3] **MR. HUGG:** Your Honor, if I may?

[4] **THE COURT:** Yes.

[5] **MR. HUGG:** Mr. Clearfield reminds me that
[6] there are hearings between the parties in the
[7] PEC matter the last week of March.

[8] **MR. YANOFF:** That's correct.

[9] **THE COURT:** Okay.

[10] **MR. HUGG:** And for myself I was hoping to
[11] go away shortly before Easter for a couple of
[12] days.

[13] **THE COURT:** Well, I'm thinking about
[14] setting the injunction hearing for after May
[15] 12th.

[16] **MR. HUGG:** I have a question when Your
[17] Honor is --

[18] **THE COURT:** Okay. Just bear with me.

[19] (Pause.)

[20] **THE COURT:** Mr. Yanoff, how many witnesses
[21] are you likely to have at this injunction
[22] hearing?

[23] **MR. YANOFF:** I would say a minimum of
[24] four, Your Honor.

[25] **THE COURT:** All right. Mr. Hugg.

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[1] responsive brief on the injunction is due April
[2] 12 and the reply brief is due April 26 and the
[3] injunction hearing is, as we said, May 20th and
[4] 21st and the order will have provisions about
[5] exchanging witness lists and exhibits and
[6] sending them to us and so on.

[7] **MR. HUGG:** I didn't hear you, Your Honor.

[8] **THE COURT:** Okay. Responsive brief on
[9] April 12th, reply brief on April 26, injunction
[10] hearing on May 20th and 21st. Obviously, if I
[11] grant the transfer motion, none of this will
[12] happen, but my assumption is that the mediation
[13] will go forward and will happen certainly
[14] before the injunction hearing and perhaps even
[15] before the briefs are due.

[16] **MR. HUGG:** So about the transfer motion,
[17] may we have oral argument on the transfer
[18] motion?

[19] **THE COURT:** No. I mean, why do you need
[20] it? Don't your papers say what they say?

[21] **MR. HUGG:** Mr. Clearfield, would you like
[22] to speak to that?

[23] **MR. CLEARFIELD:** Good morning, Your Honor.
[24] There are some additional cases that have been
[25] decided recently that make it emphatic that PUC

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[1] has either exclusive or primary jurisdiction in
[2] this matter.

[3] **THE COURT:** Then file a supplement with
[4] the cases.

[5] **MR. CLEARFIELD:** We'll be happy to do
[6] that, Your Honor.

[7] **THE COURT:** Any reason you can't file that
[8] supplement tomorrow?

[9] **MR. HUGG:** No, there's no reason we can't
[10] file it tomorrow, Your Honor.

[11] **MR. CLEARFIELD:** We'll be happy to.

[12] **THE COURT:** I'm sorry. Mr. Yanoff, did
[13] you want argument on the transfer motion?

[14] **MR. YANOFF:** I frankly don't see the need
[15] for it, Your Honor. I think the papers speak
[16] for themselves.

[17] **MR. HUGG:** Now, Your Honor, I understand
[18] that Your Honor's intention is to extend the
[19] stay until the resolution of the injunction
[20] motion --

[21] **THE COURT:** There's no -- yes, I guess
[22] you're calling it a stay.

[23] **MR. HUGG:** The order preventing PGW from
[24] taking action to turn off the gas, that
[25] order --

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[1] **THE COURT:** All right. Thank you.

[2] **MR. HUGG:** Have a good day.

[3] **THE COURT:** I probably should have
[4] disclosed Mr. Clearfield and I were colleagues,
[5] maybe partners -- I can't even remember.

[6] **MR. CLEARFIELD:** It was a different
[7] century, Your Honor.

[8] **THE COURT:** It was a different century.

[9] **MR. CHANIN:** Your Honor, I would just like
[10] to add that mediation has gone forward with
[11] individual conferences with counsel. Both
[12] sides have been forthcoming with their views of
[13] the case and trying to educate the mediator on
[14] what is complex matter involving cases before
[15] the PUC, a complaint for damages in 2021, and
[16] the case -- the matter that on which this
[17] hearing is scheduled and --

[18] **THE COURT:** Are you respectfully
[19] suggesting that I'm giving them -- that it's
[20] too quick a schedule?

[21] **MR. CHANIN:** No, I think we should keep
[22] trying to mediate. As Your Honor points out --
[23] well, it's been said that there's nothing like
[24] a hanging -- to get people's attention. As you
[25] can see, it's a difficult case. It's very

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[1] **THE COURT:** Yes.

[2] **MR. HUGG:** So and Your Honor isn't going
[3] to impose an amount that plaintiffs have to pay
[4] and Your Honor is asking us to reach an
[5] agreement on that. In the event that we can't
[6] reach an agreement on that, should we come back
[7] to the Court?

[8] **THE COURT:** No, you'll see me on May 20th
[9] and 21st.

[10] **MR. HUGG:** Respectfully, Your Honor, we
[11] object to that, because that puts us in an
[12] impossible position where plaintiff can simply
[13] choose not to pay anything and we have no
[14] recourse.

[15] **THE COURT:** Guess what, you're here now
[16] and my courtroom is empty until 1:30, so sit
[17] here and reach an agreement and you can call me
[18] back if you can't reach one.

[19] **MR. HUGG:** Very good, Your Honor. Thank
[20] you.

[21] **MR. YANOFF:** Thank you, Your Honor.

[22] **THE COURT:** Okay. Anything else we need
[23] to do today?

[24] **MR. YANOFF:** No, Your Honor. Thank you
[25] very much for your time.

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[1] complicated beyond keeping the gas on and what
[2] the rates are going to be, the payments are
[3] going to be, because it does involve these
[4] matters that have been ongoing since the
[5] earlier part of this century, and as you can
[6] see today, sometimes people argue about the
[7] shape of the table, but I think we're getting
[8] past that.

[9] **THE COURT:** I hope so.

[10] **MR. CHANIN:** I hope so.

[11] **THE COURT:** All right. Typically, once I
[12] schedule a trial or a hearing, I generally
[13] don't extend that, you know, absent some
[14] catastrophic happening that we all hope doesn't
[15] happen, so, you know, speak now or I'll see you
[16] May 20th and May 21st.

[17] **MR. YANOFF:** That's fine.

[18] **THE COURT:** So how -- I guess someone will
[19] come to -- I'm just wondering how you're going
[20] to communicate with us that you're reaching an
[21] agreement or not reaching an agreement.

[22] **MR. YANOFF:** Who would you like us to
[23] contact, Your Honor? Nobody is exactly jumping
[24] forward.

[25] **THE COURT:** I suppose Mr. Rammish. Do I

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[1] need to keep the court reporter? Are you going
[2] to potentially to put something on the record?
[3] **MR. HUGG:** I think we should put something
[4] on the record if we reach an agreement.
[5] **THE COURT:** All right. We have other
[6] things happening in court at 1:30, anyway, but
[7] I am on -- I'm on a Zoom from 12:00 to 1:30, so
[8] you better get me before 12:00.
[9] **MR. YANOFF:** Understood, Your Honor.
[10] **THE COURT:** Thank you, everyone.
[11] **THE COURT OFFICER:** This Court stands
[12] adjourned until the call the crier.
[13] **THE COURT:** Thank you all.
[14] (Brief recess.)
[15] **THE COURT OFFICER:** All rise. In the name
[16] of the Commonwealth of Pennsylvania, this Court
[17] of Common Pleas is open. The Honorable Abbe F.
[18] Fletman is now presiding.
[19] **THE COURT:** You may be seated. We're just
[20] continuing. All right. I understand that
[21] you've reached an agreement.
[22] **MR. YANOFF:** We have, Your Honor.
[23] **THE COURT:** Okay. Put it on the record,
[24] please.
[25] **MR. YANOFF:** Your Honor, with respect to

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[1] the stipulation, we -- "we" meaning the
[2] defendants in this matter -- agree to pay by
[3] the 15th of the month the sum of 15,000 --
[4] **THE COURT:** You mean plaintiffs agree to
[5] pay?
[6] **MR. YANOFF:** Did I say defendants?
[7] **THE COURT:** You did. You totally confused
[8] me.
[9] **MR. YANOFF:** And confused myself
[10] apparently, Your Honor.
[11] Plaintiffs agree to pay to PGW the sum of
[12] \$15,000 by the 15th of each month through July
[13] of 2024, so it's 15,000 due March, April, May,
[14] June, and July.
[15] **THE COURT:** Okay.
[16] **MR. YANOFF:** Then we also agree to remove
[17] Seth Shapiro from the litigation and we will
[18] file the appropriate documentation with the
[19] Court removing him.
[20] **THE COURT:** Mr. Hugg, do you agree that
[21] that's the agreement?
[22] **MR. HUGG:** Yes, we do, Your Honor. We
[23] would like this memorialized in an order.
[24] **THE COURT:** Well, draft a stipulation and
[25] put a line for me to approve it and I will

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[1] approve it.
[2] **MR. YANOFF:** Just send it to me, Jonathan,
[3] and we'll make sure that it's correct and then
[4] we'll submit it to the Court.
[5] **MR. HUGG:** That's fine.
[6] **THE COURT:** If you -- typically,
[7] stipulations show up in my computer cue right
[8] away, but if you could let Mr. Rammish know,
[9] because Monday is my last day in the office
[10] before I leave and I'd like to sign it before I
[11] go.
[12] **MR. HUGG:** Should we also submit it
[13] through the virtual portal?
[14] **THE COURT:** You can just send it directly
[15] to Mr. Rammish. We all monitor our own emails
[16] more frequently than we monitor the virtual
[17] courtroom address is the ugly truth, but file
[18] it of record.
[19] **MR. YANOFF:** Thank you for Your Honor's
[20] time.
[21] **THE COURT:** Thank you. See what happens
[22] when you're in a room together, you know, as
[23] human beings, and you reach agreements, it's a
[24] great thing.
[25] **MR. YANOFF:** It was a love fest, Your

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[1] Honor.
[2] **THE COURT:** Well, you're going to have
[3] that in the mediation.
[4] **MR. YANOFF:** Thank you, Your Honor.
[5] **THE COURT:** Thank you all. You're all
[6] excused.
[7] **THE COURT OFFICER:** The Court stands
[8] adjourned until 1:30 p.m.
[9] (Court adjourned.)
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CERTIFICATE

I hereby certify that the proceedings and
evidence noted are contained fully and
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me on the proceedings of the above matter, and
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