

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DANEE SLATON	:
Complainant	:
v.	: Docket No. C-2010-2155867
	:
PHILADELPHIA GAS WORKS	:
Respondent	:

**MEMORANDUM OF LAW IN SUPPORT
OF DANEE SLATON’S PETITION FOR INTERIM EMERGENCY ORDER
FOR RESTORATION OF GAS SERVICE**

A hearing on Danee Slaton’s Petition for Interim Emergency Order for Restoration of Gas Service, pursuant to 52 Pa. Code §§ 3.6-3.10, was held on February 16, 2010, before Administrative Law Judge Cynthia W. Fordham. Petitioner Slaton was present with counsel and provided testimony. Respondent Philadelphia Gas Works (PGW) was present with counsel and presented the testimony of two witnesses, Anne Cromley and Carlos Figueroa. ALJ Fordham informally granted Petitioner’s counsel permission to submit a post-hearing memorandum of law, if submitted by the close of business on February 17, 2010.

I. INTRODUCTION

Danee Slaton filed a Formal Complaint on February 2, 2010, claiming that in terminating gas service to her household composed of herself and her two children, on or about January 20, 2010,¹ PGW has:

- (a) violated Public Utility Code Section 1501, 66 Pa. C.S. § 1501, requiring a utility to provide “reasonably continuous service”;

¹ At the February 16, 2010 hearing, it was established that the January shut off date was January 21, 2010, not January 20th.

(b) violated 66 Pa.C.S. Chapter 14 and 52 Pa. Code Chapter 56, [in] terminating service without prior notice, in the winter time to a low-income household; and providing erroneous and incomplete service restoration terms ; and
(c) violated Section 8.3.D of PGW's Tariff, prohibiting PGW from requiring persons not responsible for unauthorized usage to pay for gas used without authorization.

Danee Slaton's Formal Complaint prayer for relief included requests that the Commission:

1. Order PGW to restore her gas service;
2. Order PGW to adjust her account to remove all non-CRP charges associated with allegedly stolen gas;
3. Declare that in demanding payment of unsubstantiated unauthorized usage charges and refusing to restore gas service, PGW acted unreasonably, in violation of Section 1501 of the Public Utility Code;
4. Declare that in terminating service without prior notice, in the winter time to a low-income household, and providing erroneous and incomplete service restoration terms, PGW acted in violation of Pa.C.S. Chapter 14 and 52 Pa. Code Chapter 56;
5. Fine PGW pursuant to Section 3301 of the Public Utility Code; and
6. Grant such other relief as is just and appropriate.

On February 4, 2010, Ms. Slaton filed a Petition for Interim Emergency Order for Restoration of Gas Service with her Verified Statement of Facts including two attachments. Ms. Slaton seeks an Order requiring PGW to restore her gas service pending the outcome of the full hearing on the merits of the Formal Complaint or other disposition of this matter.

II. ISSUES PRESENTED

Has Danee Slaton met her burden of proving that an Interim Emergency Order for restoration of gas service should be issued? Specifically, has Ms. Slaton shown that the ALJ should issue an order granting interim emergency relief based on facts to support the findings required in 52 Pa. Code § 3.6(b)? To grant the requested relief, the ALJ must conclude:

1. the petitioner's right to relief is clear;
2. the need for relief is immediate;
3. the injury would be irreparable if relief is not granted; and
4. the relief requested is not injurious to the public interest.

III. STATEMENT OF FACTS

It is undisputed that Ms. Slaton was receiving gas legally and was enrolled in PGW's low-income CRP program up until at least November 13, 2009, when PGW claims it terminated Ms. Slaton's gas service for nonpayment. PGW (Cromley) corroborated that Ms. Slaton's monthly CRP bills were \$37.24 a month and that her CRP balance in November 2009 was \$223.44. See also Slaton Exhibit 1, November 2009 PGW bill. Ms. Slaton testified that she did *not* experience an interruption in service in November 2009.

There is much evidence to support Ms. Slaton's contention that nothing indicated to her that gas service was ever shut off on November 13, 2009.² Ms. Slaton did not actually receive any personal contact from PGW prior to the scheduled November 13, 2009 termination. PGW Exhibit 5 purports to be a record of personal contact on November 4, 2009, prior to the scheduled November 13, 2009 nonpayment shut off. This Exhibit 5 shows a Result of "Contacted Customer of Record" by an "Employee ID: TELE."³ This document does not provide the customer's telephone number that was called. At the February 16, 2010 hearing, PGW (Cromley) could not provide the phone number at which the customer was allegedly reached. Ms. Slaton testified that she did not receive a phone call from PGW on November 4, 2009, and that she did not have a phone at the time because she could not afford one. PGW (Figueroa) corroborated that PGW made no personal contact with Ms. Slaton at the time of PGW's purported termination of Ms. Slaton's service at the curb on November 13, 2009. PGW provided no evidence that a post-termination notice was left at the home on November 13, 2009.

² Danee Slaton is a relatively new customer. PGW Exhibit 1 shows her PGW account commenced in December 2008. If there was a shut off notice in one of the bills, she did not see it.

³ It is notable that other PGW exhibits show Employee ID #s or Payroll # for the PGW worker conducting the task, see e.g. PGW Exhibits 6, p.1 and p. 2.

Ms. Slaton testified that she saw no PGW trucks or PGW workers near her home on November 13, 2009 and there was not indication that PGW had been at the property to shut off service.

PGW (Figueroa) also corroborated that PGW made no personal contact with Ms. Slaton at any time in January 2010 prior to the January 21, 2010 termination of service. PGW allegedly left two 72 hour notices at her home in early January 2010. Ms. Slaton testified that she did not receive the two 72 hour notices that PGW allegedly left at her home in early January 2010. PGW did not provide a copy of either of the 72 hour notices that were allegedly left at Ms. Slaton's home.

Ms. Slaton testified that she did not experience an interruption in gas service in November 2009, when PGW allegedly shut off service to her home for nonpayment. Her December 2009 final bill looked similar to her November bill (Slaton Exhibit 1) and did not indicate to her that her gas was shut off during the prior month. See PGW Exhibit 3, December 2009 bill. It is undisputed that Ms. Slaton allowed PGW workers into her home without protest or attempt to forestall entrance, on January 21, 2010, at which time PGW turned off her gas at the meter and locked the meter.

It is undisputed that Ms. Slaton applied for LIHEAP grants on January 22, 2010 and would have been eligible for \$775 in grants to be applied to her PGW account if accepted by PGW for restoration of service. PGW (Cromley) demanded a higher amount of \$1469.74 for restoration of service, which included \$1242.85 for unauthorized usage charges from November 13, 2009 through January 21, 2010, 1/24th of the previous balance or \$103.66, plus a reconnection fee of \$123.23.⁴

⁴ The amount of \$103.66 is 1/24th of the \$2487.95 balance through November 13, 2009. PGW's Credit Denial Statement, which was attached to the Ms. Slaton's Verified Statement of Facts, included some of these restoration numbers but did not include the term "unauthorized" usage nor did it indicate for which period of time unauthorized

PGW (Cromley) corroborated that, if PGW was not claiming unauthorized usage and demanding the full price of gas, the \$1242.85 charges for November 13, 2009 through January 21, 2010 would have been translated into a \$37.24 CRP bill for December 2009 and a \$37.24 CRP bill for January 2010. PGW (Cromley) corroborated that on January 21, 2010, Ms. Slaton's CRP balance would have been \$297.92 if she were billed under the CRP program.

Over Petitioner's objection, the ALJ allowed for admission into the record of PGW's Exhibit 7, including a page 3 which includes a table purporting to be a record of AMR readings.

The table is replicated below, and bolded in pertinent part:

Meter	Read Date/Time	Reading	Low Limit	High Limit	Tp/RC	UOM	TOD	Source
MTR 2087152	02/03/2010 08:18	3263.0000	2485.0000	2485.0000	N/R	CCF		Amr Read
MTR 2087152	01/21/2010 14:02	3263.0000	2485.0000	2485.0000	N/R	CCF		Sio
MTR 2087152	01/21/2010 11:25	3263.0000	2485.0000	4206.0000	N/R	CCF		Turn Off
MTR 2087152	01/05/2010 06:58	3000.0000	2485.0000	2485.0000	N/R	CCF		Amr Read
MTR 2087152	12/03/2009 08:08	2485.0000	2215.0000	5485.0000	N/R	CCF		Amr Read
MTR 2087152	11/13/2009 11:23	2485.0000	2018.0000	2506.0000	N/R	CCF		Turn On
MTR 2087152	11/13/2009 08:08	2485.0000	2215.0000	5485.0000	N/R	CCF		Amr Read
MTR 2087152	11/02/2009 08:37	2215.0000	2018.0000	4151.0000	N/R	CCF		Amr Read
MTR 2087152	10/02/2009 06:37	2018.0000	1971.0000	3139.0000	N/R	CCF		Amr Read

PGW (Figueroa) claims that this table indicates that someone restored service between 12/03/2009 and 01/05/2010, because the meter reading for 12/03/2009 was 2485.0000, the same reading as at the time of nonpayment shut off on November 13, 2009, and the 01/05/2010 meter reading jumped to the round number of 3000.0000. PGW did not explain why one of the entries for 11/13/2009 indicates "Turn On" under the Source column when that was supposed to be the day of nonpayment shut off or turn off. Ms. Slaton testified that she did *not* experience an interruption in service on November 13, 2009. Also, one of the entries for 01/21/2010 indicates "Turn Off." On January 21, 2010, Ms. Saltom *did* suffer loss of gas service after she voluntarily

usage was being charged. Also, the Credit Denial Statement did not explain or show how the 1/24th figure of \$103.66 was reached.

allowed PGW workers into her home. Ms. Slaton testified that she did not do anything to restore service on her own and did not authorize anyone to restore her service.

IV. DISCUSSION

Ms. Slaton has presented a *prima facie* case that her Formal Complaint has merit and has satisfied all the elements for granting her Petition for Interim Emergency Order for Restoration of Gas Service. She seeks injunctive relief in the form of an Interim Emergency Order for Restoration of Gas Service to return her to her last uncontested status pending the outcome of the Formal Complaint. In Americus Center v. PPL Electric Utilities Corporation, the Commission affirmed the Presiding ALJ's grant of interim emergency relief "to maintain things as they are until the rights of the parties can be considered and determined after a full hearing." PUC Docket No. C-20077427 (Order entered May 15, 2007), 2007 WL 1484284, *7 (Pa.P.U.C.). Further, the status quo that is to be preserved "is the last actual, peaceable, lawful, and uncontested status which precluded the pending controversy." *Id.* In Ms. Slaton's case, the last uncontested status was when she was still receiving gas service while enrolled in the low-income CRP program, which was on and prior to November 13, 2009.

Under PUC practice and precedent, in a hearing on the merits of the petition for interim emergency relief, the ALJ should not be focusing on the ultimate merits of the controversy or controversies at issue in the Formal Complaint. Rather, the proper inquiry is whether substantial legal questions are raised, along with the other three requirements under 52 Pa. Code § 3.6(b). Final determinations regarding the credibility of witnesses are not made during these hearings, as "the credibility of testimony . . . is not germane to the disposition of Customer's petition for

interim emergency relief.” Big Apple Dinner Theater, Inc. v. Bell of Pennsylvania 1993 WL 854400, at *3 (Pa. P.U.C., March 26, 1993).

1. Ms. Slaton’s Right to Relief is Clear.

Ms. Slaton’s testimony unequivocally states that her gas service was never actually shut off on November 13, 2009. At best, PGW’s evidence presented at the February 16, 2010 hearing is ambiguous as to whether gas service was ever terminated on that date. See PGW Exhibit 7, p. 3, showing “Turn On” on November 13, 2009.

There are also other substantial legal questions such as the reasonableness of the restoration terms demanded by PGW. If Ms. Slaton is found not responsible for unauthorized usage, PGW can be barred from demanding that Ms. Slaton pay for non-CRP charges as a condition of service. Ms. Slaton should also be allowed an opportunity to challenge the reasonableness of PGW’s demand of \$1242.85 for just over two months of service.⁵

In a Petition for Interim Emergency Order, a Petitioner need not prove that his or her Formal Complaint will be successful in order to show that the right to relief is clear. In Americus, the ALJ concluded that for PPL to meet the first criteria, “it need not establish its entitlement as absolute right to relief on the underlying claim. Rather, PPL ... must establish the underlying claim raised substantial legal questions.” 2007 WL 1484284 at *8 (citing T.W. Phillips Gas and Oil v. People Natural Gas, 492 A.2d 776 (Pa. Cmwlth. 1985)). In Harris v. UGI Utilities, the Commission ratified the ALJ’s ruling that in finding “Petitioners’ right to relief is clear, it is not necessary to determine the merits of the controversy. Rather, in addition to satisfying the other criteria, it must only be shown that [Petitioners’] claims raise substantial legal questions.” 2004 WL 1151528, at *3 (Pa. P.U.C., February 12, 2004).

⁵ The Formal Complaint raises other legal questions about the propriety of PGW’s termination procedures and the reasonableness of its restoration terms.

In this case, Petitioner Danee Slaton has shown, at the very least, that the evidence so far is unclear whether gas service was actually terminated from her home on November 13, 2009. PGW's own Exhibit 7 at page 3 shows a "Turn On" on November 13, 2009. By extension, it is not clear whether there was any unauthorized usage at the home between November 13, 2009 and January 21, 2010. Big Apple Dinner Theater is a case where the Commission overruled a Presiding ALJ's denial of interim emergency relief for immediate restoration of service, in a dispute over termination for nonpayment. There, the Commission insisted that in such circumstances, the denial would be inappropriate because "our affirmation of this denial, so early in the proceeding, is tantamount to a judgement on the merits given the nature of the relief sought by the Complaint." 1993 WL 854384 at *5.

2. The Need for Relief is Immediate.

Ms. Slaton and her two small children, ages 5 and 2, are in immediate need of gas service. They use natural gas for central heating, hot water and cooking gas. Electric space heaters are potentially dangerous and not an adequate substitute for central gas heat. Ms. Slaton testified about how she and her children have been traveling in the snow to a relative's home that is one and a half hours away by public transportation in order to bathe. She has been unable to cook meals for her children and must buy prepared food.

An emergency is defined as "[a] situation which presents a clear and present danger to life or property." 52 Pa. Code § 3.1. Harms that will clearly follow the denial of interim relief, as opposed to speculative harms, are deemed "immediately" necessary. In Harris v. UGI Utilities, 2004 WL 1151528, at *3 (Pa. P.U.C., February 12, 2004), the Petitioners, a group of low-income neighbors, sought restoration of their natural gas service after UGI wrongfully terminated service to their homes and converted their source of heat and hot water to propane. The company that

delivered the propane demanded payment in full on delivery and did not offer any of the payment assistance programs offered by UGI—payment assistance programs that the Petitioners needed in order to maintain service. The choice that UGI required the Petitioners to make: pay heating bills you can not afford or suffer in the cold, is a form of economic detriment that the Commission recognizes as an emergency situation in need of immediate relief. In Harris, “the economic detriment is immediate . . . since it is January and the need for heat is constant.” Id.

Likewise, in Ms. Slaton’s case, it is February and the need for heat is constant. PGW terminated Ms. Slaton’s heat-related gas service on January 21, 2010 under the mistaken view that her usage was unauthorized and is consequently demanding restoration terms that are unaffordable to Ms. Slaton. She and her children are already suffering without gas service and are not merely predicting some future harm that may or may not happen. Peoples Natural Gas v. Public Utility Commission, 124 Pa.Cmwlt. 59, 65, 555 A.2d 288, 291 (“the *speculative* economic threat of the loss of the proposed plant expansion in that case would not permit a finding of clear immediate and irreparable injury”) (emphasis added). Ms. Slaton and her children are in immediate need of gas service to provide warmth and sanitary conditions in the home, pending the outcome of this case.

3. The Injury Would Be Irreparable if Relief Is Not Granted.

The health and safety of Ms. Slaton and her children are at risk with each day they are without gas service for heat, hot water and cooking. The irreparable injury requirement is met when absent interim relief, the petitioner suffers losses that the petitioner “would not be able to recover later.” West Penn Power Company v. Public Utility Commission, 150 Pa.Cmwlt. 349, 363, 615 A.2d 951, 959. (1992). Ms. Slaton and her children also suffer from long trips in the cold and snow to reach heat and hot water, from inability to cook hot meals, and from exposure

to potentially unsafe electric heaters. They are suffering irreparable harms that cannot be cured with monetary damages or an eventual adjustment in the utility bill. In Dennis J. Atiyeh v. UGI Utilities, Inc., the ALJ issued an “interim emergency order” that gas service for heating, cooking and hot water terminated for nonpayment by the owner-customer be restored to a person whose status as a tenant or boarder was yet to be clearly determined. (C-00945577, Initial Decision, September 19, 1994), 1994 WL 932314 (Pa.P.U.C.)). Likewise, in this case, an interim emergency order should be issued to restore gas service to Ms. Slaton and her children, pending the determination of the parties rights in the underlying Formal Complaint.

4. Restoration of Ms. Slaton’s Gas Service Pending the Outcome of the Formal Complaint Proceeding Will Not Be Injurious to the Public Interest.

Ms. Slaton’s Petition for Interim Emergency Relief satisfies the requirement of 52 Pa. Code 3.6(b)(4) that the relief of restoration of gas service would “not be injurious to the public interest.” This standard requires the Commission to balance the harm to the Petitioner if relief is not granted, against the harm to the utility if the relief is granted but the Petitioner does not ultimately prevail on the merits of the underlying Formal Complaint. Americus Center v. PPL Electric Utilities Corporation, PUC Docket No. C-20077427 (Order entered May 15, 2007), 2007 WL 1484284 (Pa.P.U.C.). Without the relief of restoration of gas service, Ms. Slaton and her children are at serious risk of additional harm to their health and safety. If relief is granted, PGW will suffer no harm and assumes little risk, because the 180 day November 1 to April 1 heating season, when gas usage is highest, is 75% over, with less than 44 days to go. By restoring service, even on an interim basis, PGW could have the opportunity to obtain \$775 in LIHEAP grants, plus Ms. Slaton’s monthly payments that are least equal to her CRP bills.

V. CONCLUSION

For all the foregoing reasons, Ms. Slaton's Petition for Interim Emergency Order for Restoration of Gas Service should be granted and PGW should be ordered forthwith to restore gas service to Ms. Slaton's home at 630 East Clementine Street in Philadelphia, pending further proceedings in this case.

Respectfully submitted,

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