



COMMUNITY LEGAL SERVICES
OF PHILADELPHIA

March 8, 2010

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Danee Slaton v. Philadelphia Gas Works, Docket No. C-2010-2155867

Dear Secretary McNulty:

On behalf of Petitioner Danee Slaton, attached please find attached Petitioner Slaton's Brief in Support of the Presiding Officer's Interim Emergency Order in the above-captioned matter, which is being served on the parties today. This Brief is being filed pursuant to 52 Pa.Code § 1.56(b) concerning due dates for responses to documents served by First Class U.S. Mail.

Thank you for your attention to this matter.

Very truly yours,

/s/ Philip A. Bertocci, Esquire
PHILIP A. BERTOCCHI, ESQUIRE
THU B. TRAN, ESQUIRE

Attorneys for Danee Slaton

cc: Certificate of Service

Enclosures

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DANEE SLATON	:	
Petitioner	:	
vs.	:	
PHILADELPHIA GAS WORKS	:	
Respondent	:	Docket No. C-2010-2155867
	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day, served a copy of the Petitioner Slaton's Brief in Support of the Presiding Officer's Interim Emergency Order upon the participants, listed below, in accordance with the requirements of 52 Pa.Code §1.54 (relating to service by a participant).

By e-mail and overnight mail:

Administrative Law Judge Cynthia W. Fordham
Pennsylvania Public Utility Commission
Suite 4063
801 Market Street
Philadelphia, PA 19107
cfordham@state.pa.us

By e-mail and first-class mail:

Laureto A. Farinas, Esquire
Philadelphia Gas Works
Legal Department
800 West Montgomery Avenue
Philadelphia, PA 19122
Laureto.Farinas@pgworks.com

By first-class mail:

Danee Slaton
630 East Clementine Street
Philadelphia, PA 19134

Dated this 8th day of March 2010

/s/ Philip A. Bertocci
Philip A. Bertocci, Esquire
Community Legal Services, Inc.
1424 Chestnut Street
Philadelphia, PA 19102

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**PETITIONER SLATON’S BRIEF IN SUPPORT
OF THE PRESIDING OFFICER’S INTERIM EMERGENCY ORDER REQUIRING
SERVICE RESTORATION TO COMPLAINANT’S RESIDENCE**

I. INTRODUCTION.

In this case, low income Complainant Danee Slaton (hereinafter “Slaton” or “Petitioner”) alleges, *inter alia*, that the Philadelphia Gas Works terminated service to her home on January 21, 2010, in violation of Public Utility Code Section 1501, 66 Pa.C.S. § 1501, requiring reasonably continuous service and in violation of Chapter 14 Section 1406(e), 66 Pa.C.S. § 1406(e) prohibiting the winter termination of a low income customer for non-payment without prior specific authorization of the Commission.¹

On February 2, 2010, Slaton filed a Formal Complaint with the Commission based on these and other related allegations. On February 4, 2010, Slaton filed a Petition for Interim Emergency Order with the Commission pursuant to 52 Pa. Code § 3.6, requesting that an Interim

¹ The Formal Complaint, at p. 2 states:

Legal Claims: Complainant claims that in terminating her gas service, PGW has
(a) violated Public Utility Code Section 1501, 66 Pa. C.S. § 1501, requiring a utility to provide “reasonably continuous service”;
(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.

Emergency Order be issued to restore her gas service immediately. In opposition to PGW's contention that the January 21, 2010 termination was justified because she was engaging in unauthorized use (self turn-on) after service was terminated for non-payment on November 13, 2009, she contends that although PGW may have attempted to shut her off for non-payment on that date, for unknown reasons, shut-off was not effectuated, and that she continued to receive service until she was shut off on January 21, 2010.

A hearing on Slaton's Petition was held on February 16, 2010 before Administrative Law Judge Cynthia Williams Fordham (hereinafter "ALJ"), who has provided an accurate procedural history which Petitioner incorporates herein by reference.² In her February 17, 2010 Interim Emergency Order, the ALJ ordered, *inter alia*, that PGW restore Slaton's gas service upon provision to the Company of \$775.00 in LIHEAP funds and that Slaton pay for current monthly gas service going forward.

On February 25, 2010, the ALJ issued a document entitled "Certifying the Order Granting the Petition for Interim Emergency Order to the Commission for Review and Answer a Material Question" (hereinafter "Certification"). The ALJ formulated the "material question" as follows:

Whether it is reasonable for the restoration fee to be calculated based on the total balance due, instead of requiring that the total amount of unauthorized service be paid in addition to a portion of the past due balance, since there is a dispute regarding whether service was unauthorized.

Certification, at 4.

This Brief is submitted pursuant to a 52 Pa.Code § 5.305(c) authorizing the submission of briefs not exceeding fifteen (15) pages to be filed within seven (7) days of service of the

² See ALJ's February 25, 2010 submission entitled Certifying the Order Granting the Petition for Interim Emergency Order to the Commission for Review and Answer a Material Question, at 2.

Certification. Since the Certification was served by U.S. Postal Service mail, Slaton is filing this brief within ten (10) days of service pursuant to 52 Pa.Code § 1.56(b).

II. ARGUMENT.

A. Because There Are Substantial Legal Questions Regarding Whether Slaton Was Receiving Unauthorized Service at the Time of Service Termination on January 21, 2010 and Because the Three Other Requirements for Issuance of an Interim Emergency Order Have Been Satisfied, the ALJ Correctly Ordered PGW to Restore Gas Service to Slaton's Home.

In both her February 17, 2010 Interim Emergency Order and in her February 25, 2010 Certification, the ALJ recognized that Petitioner had raised a substantial legal issue concerning whether she was engaging in "unauthorized use" of natural gas service at the time of her service termination on January 21, 2010. This is the key determination in this case. If the low-income Petitioner was not engaging in "unauthorized use," then PGW had no right to terminate her service at that time without prior Commission authorization. Accordingly, the Interim Emergency Order requiring immediate service restoration is legally required.

For an Interim Emergency Order pursuant to 52 Pa.Code § 3.6. to issue, the ALJ was required to determine that Slaton met her factual and legal burden in support of her claim. To obtain the relief requested, Petitioner Slaton was required to produce evidence satisfying a four pronged test composed of the following elements:

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.

1. Statement of Facts.

It is undisputed that 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 Slaton's gas service for nonpayment. PGW (Cromley) corroborated that Slaton's monthly CRP bills were \$37.24 a month and that her CRP balance in November 2009 was \$223.44. Tr. 34,50; Slaton Exhibit 1. Slaton testified that she did *not* experience an interruption in service in November 2009. Tr. 19,21,80,81.

There is much evidence to support Slaton's contention that nothing indicated to her that gas service was ever shut off on November 13, 2009. Slaton did not actually receive any personal contact from PGW prior to the scheduled November 13 termination. Contrary to PGW's claim that it made personal contact with her by telephone on November 4, 2010, at least 72 hours prior to November 13, PGW could not provide the phone number utilized, and Slaton testified that due to her unemployment and associated financial difficulties, she did not have telephone service at that time. Tr. 79.³ PGW (Figueroa) corroborated that PGW made no personal contact with Slaton at the time of PGW's purported termination of Slaton's service at the curb on November 13, 2009. PGW provided no documentary evidence to show that a post-termination notice was left at the home on November 13, 2009. Tr. 69-70.

Slaton testified that she saw no PGW trucks or PGW workers near her home on November 13, 2009 and there was no indication that PGW had been at the property to shut off service. Tr. 19,30,81. 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. Tr. 19,21,80,81. Her December 2009 final bill looked similar to her November bill (Slaton Exhibit

³ 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."

1) and did not indicate to her that her gas was shut off during the prior month. Tr. 28; PGW Exhibit 3. It is undisputed that 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. Tr. 20.

As the ALJ noted, PGW's evidence concerning whether it had actually terminated Slaton's service on November 13, 2010 was inconclusive:

[i]t is not clear from the record whether the Petitioner's gas usage after November 13, 2009 was unauthorized. There is inconsistency with exhibits produced during the hearing. One exhibit indicates that the gas service was terminated for nonpayment by 10:49 a.m. on November 13, 2009. PGW Ex. 6 at 2. While another exhibit indicates that the service was turned on at 11:23 a.m. on November 13, 2009. PGW Ex. 7 at 3.

Interim Emergency Order, at 6. Indeed, PGW Exhibit 7 at 3 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	2485.000	2485.000	N/R	CCF		Amr Read
			0	0				
MTR 2087152	01/21/2010 14:02	3263.0000	2485.000	2485.000	N/R	CCF		Sio
			0	0				
MTR 2087152	01/21/2010 11:25	3263.0000	2485.000	4206.000	N/R	CCF		Turn Off
			0	0				
MTR 2087152	01/05/2010 06:58	3000.0000	2485.000	2485.000	N/R	CCF		Amr Read
			0	0				
MTR 2087152	12/03/2009 08:08	2485.0000	2215.000	5485.000	N/R	CCF		Amr Read
			0	0				
MTR 2087152	11/13/2009 11:23	2485.0000	2018.000	2506.000	N/R	CCF		Turn On
			0	0				
MTR 2087152	11/13/2009 08:08	2485.0000	2215.000	5485.000	N/R	CCF		Amr Read
			0	0				
MTR 2087152	11/02/2009 08:37	2215.0000	2018.000	4151.000	N/R	CCF		Amr Read
			0	0				
MTR 2087152	10/02/2009 06:37	2018.0000	1971.000	3139.000	N/R	CCF		Amr Read
			0	0				

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 turn off.

1. The Petitioner’s Right to Relief Is Clear.

In order to establish a “clear” right to relief, within the meaning of 52 Pa.Code § 3.6(b)(1), a Petitioner must establish not an absolute right to relief on the merits, but only that he/she has raised “substantial legal questions.” Americus Center v. PPL Electric Utilities Corporation, C-20077427 (May 15, 2007), 2007 WL 1484284, *7 (Pa.P.U.C.). On the basis of the testimony and exhibits, the ALJ rightly concluded that Petitioner had raised substantial questions concerning: “whether the petitioner’s use of gas service after November 13, 2009 was unauthorized usage; whether the Respondent [PGW] terminated the Petitioner in winter in violation of the Commission’s regulations; whether the Respondent [PGW] gave the requisite notice to the Petitioner; and whether the restoration terms were reasonable.” Interim Emergency Order, at 6.

Slaton submits that the ALJ’s conclusions are amply supported because Petitioner’s showing, both factual and legal, easily meets the quantum necessary to satisfy the requirements of 52 Pa.Code § 3.6(b)(1). Under PUC practice and precedent, in a hearing on a Petition for Interim Emergency Relief, the ALJ is not to focus 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 presence of evidence satisfying the other three requirements under 52 Pa. Code § 3.6(b)(2)-(4). 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).

Slaton's testimony unequivocally states that her gas service was never actually shut off on November 13, 2009. Tr.9,21,80,81. In contrast, 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 at 3, showing "Turn On" on November 13, 2009. In this case, with conflicting evidence, the record, at the very least, is unclear whether gas service was ever actually terminated to Slaton's home on November 13, 2009. PGW's own Exhibit 7 at page 3 shows a "Turn On" on November 13, 2009. By logical extension, since unauthorized usage could only have occurred subsequent to a legal service shut-off, the very least that can be said on behalf of Petitioner is that it is unclear 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." Big Apple Dinner Theater, 1993 WL 854384 at *5 (Pa.P.U.C., March 26, 1993).

Although the issue of whether Slaton was engaging in unauthorized use is central in this case, the ALJ also recognized that Slaton had raised other substantial legal questions. In summary form, those issues are:

- (1) whether PGW made the statutorily required (66 Pa.C.S. § 1406(b)(1)(ii)) attempts at personal contact at least 72 hours prior to November 13, 2009, the date it asserts that it terminated Slaton's service for non-payment. PGW claims that it satisfied this requirement by telephone, but as the ALJ noted,

Slaton testified that in early November, when these attempts were allegedly made, she did not have telephone service due to her unemployment related financial difficulties. To satisfy its 72 hour notice requirement, PGW would have had to attempt to contact Slaton in person at her residence. PGW does not contend that it made such an attempt at least 72 hours prior to November 13, 2009.

(2) After the service termination on January 21, 2010, PGW took the position that Slaton was required to pay upfront the full charges for the gas obtained allegedly by unauthorized use (\$1,242.85). In addition, she would be required to pay a reconnection charge of \$123.23, and an upfront payment of pay 1 / 24th of the outstanding balance for service received up until November 13, 2009, the date when allegedly she had been terminated for non-payment. If, as Slaton contends, no termination occurred on November 13, 2009 and no unauthorized use occurred, PGW should not have required upfront payment of the \$1,242.85, and would not have been justified in requiring a reconnection fee associated with an illegal winter residential shut-off.

In Harris v. UGI Utilities, the Commission ratified an ALJ's Interim Emergency Order, stating 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). The ALJ correctly concluded here that Petitioner had shown a "clear" right to relief.

2. The Need for Relief is Immediate.

Slaton and her two young children, ages 5 and 2, were in immediate need of gas service. They used natural gas for central heating, hot water and cooking gas. Due to lack of central heating in the house, Slaton and her children have been forced to use electric space heater and to huddle together in two rooms. Tr. 17. Slaton testified 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. Tr. 16. For food preparation for herself and her children, she has

had to make do with a hot plate or to eat or order out. Tr. 22. The Commission has long recognized that electric space heaters are potentially dangerous and not an adequate substitute for central gas heat.⁴

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, trigger or cause an “immediate need” for relief to remove the danger. The Commission has long held that termination of heat-related residential gas service in the winter presents an immediate threat to the health and safety of customers. Several years ago, the Commission described the dangers posed by a potential termination of whole sale gas supply by T.W. Phillip to Shadyside Gas, a company distributing gas service to residential customers as follows:

Clearly, without the wholesale gas service provided by T.W. Phillips to Shadyside Gas, Shadyside Gas will be unable to maintain reasonable and adequate gas service to its customers as required by the Public Utility Code. With the winter heating season fast approaching, Shadyside Gas customers who heat with gas will need this service to keep warm. The Commission’s regulations define an Emergency as a situation that “presents a clear and present danger to life or property.” 52 Pa.Code § 3.1. These circumstances clearly constitute an emergency requiring Commission action under 52 Pa. Code § 3.1 to assure the reasonableness and safety of gas utility service provided to the customers of Shadyside as required by Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501.

In Re: T.W. Phillips Gas and Oil Co.’s Proposed Termination of Wholesale Gas Service to Nido’s Ltd., Inc. t/b/a Shadyside Gas, Docket No. M - 00031764 (October 15, 2003); 2003 WL 23153669 (Pa.P.U.C.).

⁴ PUC Chart entitled “4-Year Average, 2008 & 2009 Cold Weather Survey Results - Gas” issued December 16, 2009. See also PUC Press Release issued December 16, 2009 entitled “PUC Urges Consumers: Call Now to Restore Utility Service as Report Shows 17,037 Homes Without Heat-Related Utility Service, an additional 3,992 Use Potentially Unsafe Heat”: “Homes using potentially unsafe heating sources also are counted because the home is not relying on a central-heating system. According to the National Fire Protection Association, potentially unsafe sources of heat include kerosene heaters, kitchen stoves or ovens, *electric space heaters*, fireplaces and connecting extension cords to neighbors’ homes.” (Emphases added).

Similarly, in Harris v. UGI Utilities, C-20032233 (February 12, 2004), 2004 WL 1151528, at *3 (Pa. P.U.C.), 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 recognized as an emergency situation in need of immediate relief. In Harris, the Commission held that not just deprivation of gas service, but deprivation of *subsidized* gas service could establish an immediate need under 52 Pa.§ 3.1(b)(2): “the economic detriment is immediate . . . since it is January and the need for heat is constant.” Id.

Likewise, in Slaton’s case, it is winter and the need for heat is constant. PGW terminated 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 Slaton. She and her children have already been suffering injuries without gas service and have not merely predicted some future harm that may or may not happen. Peoples Natural Gas v. Public Utility Commission, 124 Pa.Cmwlth. 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). The ALJ correctly concluded that Slaton and her children were 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 Slaton and her children were at risk with each day they were without gas service for heat, hot water and cooking. The irreparable injury requirement contained in 52 Pa.Code § 3.6(b)(3) 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.Cmwlth. 349, 363, 615 A.2d 951, 959 (1992). Slaton and her children were also suffering 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. Tr.16,17,22. They were suffering irreparable harms that could not be cured with monetary damages or an eventual adjustment in the utility bill. In Atiyeh, 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. Atiyeh v. UGI Utilities, Inc., C-00945577 (Initial Decision, September 19, 1994), 1994 WL 932314 (Pa.P.U.C.).

Commission precedent provides a second, alternative ground for finding that the Section 3.6(b)(3) “irreparable injury” requirement has been met in this case. Slaton has raised substantial legal questions concerning whether PGW has taken actions expressly forbidden under Commission law and regulations. She has raised a legal question whether the Chapter 14 Section 1406(e)(1) bar on winter terminations has been violated; whether the Chapter 14 Section 1406(b)(1)(ii) requirement concerning attempted personal contact with the customer at least 72 hours before the alleged November 13, 2009 termination for non-payment was satisfied; whether the payment terms offered after the January 21, 2010 service termination were in compliance with Chapter 14 Section 1407(c)(2)(iii). Substantial questions concerning violations of express provisions of the Public Utility Code constitute irreparable injury *per se* under PUC

jurisprudence interpreting 52 Pa.Code § 3.6(b)(3). Harris v. UGI Utilities, PUC Docket No. C-20032233 (February 12, 2004), 2004 WL 1151528 (Pa.P.U.C.).

The ALJ correctly determined that Slaton had satisfied the “irreparable injury” requirement.

4. Restoration of Slaton’s Gas Service Will Not Be Injurious to the Public Interest.

Slaton’s Petition for Interim Emergency Relief satisfies the requirement of 52 Pa. Code 3.6(b)(4) that relief in the form of immediate 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 this 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, C-20077427 (May 15, 2007), 2007 WL 1484284 (Pa.P.U.C.). Without the relief of restoration of gas service, Slaton and her children are at serious risk of additional harm to their health and safety. As the ALJ correctly concluded at the time of the hearings, if this 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 Slaton’s monthly payments. PGW’s claims that granting the issuance of an Interim Emergency Order in this case would send the message to the public that theft goes unpunished is self-serving and circular. It is precisely the issue of whether any unauthorized use occurred which is at the core of this case.

B. The Material Question Submitted By the ALJ Concerning Calculation of the “Restoration Fee” Need Not Be Answered at This Time.

After finding that issuance of an Interim Emergency Order is justified on the grounds that there are substantial legal questions concerning whether there was unauthorized use justifying termination on January 21, 2010 and even whether PGW was justified, due to the lack of the requisite 72 hour attempt at personal contact, in even trying to terminate Slaton's service on November 13, 2009, the ALJ has formulated the following Material Question:

Whether it is reasonable for the restoration fee to be calculated based on the total balance due, instead of requiring that the total amount of unauthorized service to be paid in addition to a portion of the past due balance, since there is a dispute regarding whether service wa unauthorized.⁵

Slaton respectfully submits that these questions do not need to be answered at this time. The ALJ has set forth appropriate terms for service restoration, including payment of \$750 in LIHEAP funds and payment by Slaton of monthly charges going forward during the pendency of this case. At this stage of the proceedings, Slaton has not had the opportunity to conduct discovery to probe the basis for PGW's claim that she used sufficient gas in the period between November 13, 2009 and January 21, 2010 to justify PGW's claim for \$1,242.85 in additional charges for that period.

The answer to the amount that Slaton might be required to pay upfront for service received up to January 21, 2010 hinges on the primary issue in this case – whether Slaton was engaging in unauthorized use at the time of her service termination on that date. The answer will be different depending on whether (a) it is ultimately determined that no unauthorized use occurred; (b) it is ultimately determined that unauthorized use occurred.

If, as Slaton contends, there was no unauthorized use, then her total balance should be composed only of her total outstanding balance as of November 13, 2009, plus any unpaid charges for gas consumed since that date. She should not be charged the \$123.23 reconnection

⁵ Certification, at 4.

charge, because the January 21, 2010 termination was in violation of existing law and regulations.⁶

On the other hand, should PGW prevail on its claims that the January 21, 2010 termination was fully justified and that there is a reasonable basis for the \$1,242.85 charges associated with usage in the November 13, 2009-January 21, 2010 period, and no further relevant information become available through discovery or otherwise, then PGW's claim for upfront payment of \$1,242.85, a reconnection charge of \$123.23, and 1 / 24 of the outstanding balance (with payment of the balance over 23 months) would preliminarily appear to constitute legally permissible restoration terms. If such is the case, Slaton submits that the \$750 LIHEAP payment that has been made since the issuance of the Interim Emergency Order should be applied to the \$1,242.85, thereby reducing the amount of the upfront payment required for permanent service reconnection.

C. Conclusion.

In Americus Center, 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." Americus Center v. PPL Electric Utilities Corporation, C-20077427 (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 Slaton's case, the last uncontested status was the time prior to November 13, 2009 when she was receiving gas service while enrolled in the low-income CRP

⁶ There is also an issue concerning whether PGW should be required to credit payments that she has made since that time, whether from LIHEAP funds or otherwise, to cure her CRP default and to obtain reinstatement in CRP. At this point, the record does not contain the necessary testimony and evidence to permit resolution of this issue.

program. The ALJ's Interim Emergency Order reestablished that status quo ante pending further proceedings regarding the factual issues upon which all other questions depend. For all the foregoing reasons, the Commission should affirm the ALJ's Interim Emergency Order requiring that PGW restore natural gas service to Slaton's home at 630 East Clementine Street in Philadelphia.

Respectfully submitted,

/s/ Philip A. Bertocci

Philip A. Bertocci, Esquire
Thu B. Tran, Esquire
Attorneys for Petitioner Danee Slaton
COMMUNITY LEGAL SERVICES, INC.
1424 Chestnut Street
Philadelphia, PA 19102
215-981-3777

March 8, 2010