



1410 West Erie Avenue Philadelphia, PA 19140
Phone: 215.227.2400
Web Address: www.clsphila.org

April 4, 2019

Secretary Rosemary L. Chiavetta
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

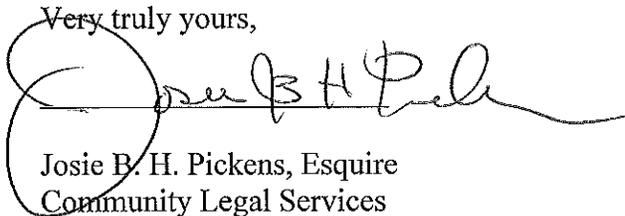
Re: Tomisha Palmer v. Philadelphia Gas Works, Docket No. F-2018-3006197

Dear Secretary Chiavetta:

Enclosed for filing is Complainant's **Brief in Opposition to the Order Denying Petition for Interim Emergency Relief and Certifying Material Question.**

This document has been filed electronically with the Commission and served on the parties.

Very truly yours,



Josie B. H. Pickens, Esquire
Community Legal Services
1410 West Erie Avenue
Philadelphia, PA 19140
(215) 227-4378 (p)
jpickens@clsphila.org

Enclosures
cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TOMISHA PALMER	:	
Complainant	:	
	:	F-2018-3006197
	:	
PHILADELPHIA GAS WORKS	:	
Respondent	:	

**Brief in Opposition to Order Denying Petition for Interim Emergency Relief and Certifying
Material Question**

On March 28, 2019, Administrative Law Judge Christopher P. Pell (“ALJ Pell”) issued the Order Denying Petition for Interim Emergency Relief and Certifying Material Question (“Order”) in this matter. Pursuant to 52 Pa. Code § 5.305(c), Petitioner submits this brief in opposition to the denial of interim emergency relief. Petitioner respectfully requests that the Commission find that ALJ Pell incorrectly denied her Petition and grant Petitioner’s request to establish service at 1763 N. Croskey Street in Philadelphia.

I. SUMMARY OF THE FACTS

On August 1, 2018, Tomisha Palmer (“Complainant” or “Petitioner”) went to a Philadelphia Gas Works (“PGW”) office to apply for gas service at 1763 N. Croskey Street. Tr. at 25. PGW informed Petitioner that she could not establish service at 1763 N. Croskey Street until she made an upfront payment of more than \$5300 for billing charges associated with an alleged meter bypass at her prior residence, 4244 N. Hicks Street in Philadelphia. Tr. at 26. The sole basis for PGW’s denial of service to Petitioner at 1763 N. Croskey Street is PGW’s claim that Petitioner is responsible for charges associated with an alleged meter bypass at 4244 N. Hicks Street. Petition at ¶ 3; P-2. Petitioner satisfies all other applicable requirements to establish service at 1763 N. Croskey Street. Petition at ¶ 3; P-2. Petitioner does not own the property at 4244 N. Hicks and did not continuously occupy it during the period in dispute. Tr. at 28-29. Petitioner did not have exclusive possession or control of the property during the

periods of her occupancy. Tr. 32-33. Petitioner was not PGW's customer immediately preceding the discovery of the alleged bypass. Tr. at 32; R-4. Petitioner did not cause or permit any meter bypass to exist or occur at 4244 N. Hicks Street and denies PGW's allegation that she is responsible for any charges associated with an alleged meter bypass at 4244 N. Hicks Street. Tr. at 33.

As a result of PGW's allegation, Petitioner cannot afford to establish a PGW account in her name at 1763 N. Croskey Street. Tr. at 49. Petitioner has been living without natural gas for heat, cooking, and hot water for sanitation. Tr. at 34-40. She has had to rely on an electric space heater to heat her entire home and supplements this heat source by boiling hot water on an electric hot plate and using the steam to keep warm. Tr. 35-36. Without natural gas for cooking, Petitioner has been unable to eat essential good meals and instead has had to rely on instant and processed foods cooked on an electric hot plate. Tr. 36. Without natural gas for hot water, she is unable to obtain decent living and sanitary conditions; she has to boil water on an electric hot plate to cook, bathe, and clean. Tr. 36-37. In order to bathe, Petitioner has been heating water in a coffee pot on an electric hot plate up to eight times in a row so that she has enough water to fill up the sink to bathe. Tr. 37-38. As a result of her lack of natural gas service, Petitioner is sick constantly with runny noses and sore throats. Tr. 39-40.

Petitioner is unable to reunify with her five minor children who are currently in custody with the Department of Human Services ("DHS") until Petitioner can obtain a PGW account. Tr. 42-43; P-1. Petitioner is seeking an Interim Emergency Order to establish gas service at 1763 N. Croskey Street.

II. ARGUMENT

A. Petitioner has satisfied all four prongs of the standard for interim emergency relief under 52 Pa. Code § 3.6.

1. The ALJ erred in finding that Petitioner did not prove that her right to relief is clear.

To prevail on her Petition for Interim Emergency Order, Petitioner needed to satisfy all four prongs of the standard set forth at 52 Pa. Code § 3.6. The first prong of the standard requires Petitioner to show that her right to relief is clear. 52 Pa. Code § 3.6(b)(1). To satisfy the first prong, Petitioner need not show success on the merits of the case. Rather, Petitioner's claim must raise substantial legal questions.

West Goshen Township v. Sunoco Pipeline L.P., No. C-2017-2589346, 2017 WL 5007122, at *6 (Pa. PUC Oct. 26, 2017); *Application of Fink Gas Co. for Approval of the Abandonment of Serv. by Fink Gas Co. to 22 Customers Located in Armstrong Cty., Pennsylvania, & the Abandonment by Fink Gas Co. of All Nat. Gas Servs. & Nat. Gas Distribution Servs*, 2015 WL 5011629, at *4 (Pa. PUC Aug. 20, 2015) (*Fink*); *T.W. Phillips Gas and Oil v. Peoples Natural Gas*, 492 A.2d 776, 781 (Pa. Cmwlth. 1985).

a. The ALJ improperly made a determination based on the merits of the case.

In his Order, ALJ Pell made an improper determination based on the merits of the claim. It is well-established that to show a clear right to relief “the only required determination is that the petition raises substantial legal questions.” *Core Communications, Inc. v. Verizon Pennsylvania, Inc. and Verizon North LLC*, 2011 WL 5121092 (Pa. PUC Sept. 23, 2011) (*Core*). In *Core*, the Commission overturned the ALJ’s finding that there was no clear right to relief because Petitioner’s chances of prevailing were “wholly uncertain.” *Id.* The Commission held that the ALJ’s interpretation was “unreasonably strict” and acknowledged that “[r]equiring a petitioner seeking emergency relief to demonstrate, with certainty, that litigation will be resolved in its favor would be an impossible burden to meet.” *Id.*

ALJ Pell acknowledged that Petitioner’s underlying claim “raises substantial legal questions that deserve serious consideration by the Commission” and yet still concluded that Petitioner had failed to meet this element of the standard for interim emergency relief. Order at 9. ALJ Pell lists numerous legal questions that Petitioner has raised, concluding that they are “important questions which deserve serious consideration and resolution.” Order at 9.

ALJ Pell did not end his analysis upon concluding that Petitioner’s claim raises substantial legal questions; instead, he went further and assessed the merits of the underlying case. ALJ Pell made a legal conclusion that because Petitioner “used and benefited from gas service she didn’t pay for,” there was no way she could prevail in her complaint. Order at 10. Not only does this assessment fail to address important provisions of the Public Utility Code and PGW’s Tariff described below, but it never should have been conducted in the first place. ALJ Pell impermissibly made a determination on the merits while discovery remains ongoing, prior to any hearing or briefing on those merits, and without the benefit of the

full record that must be established. Moreover, ALJ Pell unfairly disregarded Petitioner's specific averments that she is not responsible for any alleged meter bypass that may have occurred at 4244 N. Hicks Street, and that PGW's conduct has been, and continues to be illegal.

b. Petitioner has proved that her right to relief is clear.

Petitioner raised substantial legal questions related to a number of issues that warrant serious consideration by the Commission. Counsel for PGW and ALJ Pell have characterized Petitioner's legal questions as standard legal questions related to theft.¹ Order at 9; Tr. at 19. Even if Petitioner's questions were "standard," they still require the ALJ to conduct a full and fair hearing regarding Petitioner's claims of continuing and unlawful conduct by PGW. Simply because Petitioner has been held responsible for an alleged meter bypass by PGW does not mean the Commission should accept those allegations without a thorough consideration of Petitioner's claims. Moreover, the Complaint raises important, novel legal questions that require the interpretation of various provisions of the Public Utility Code and Commission Regulations and the application of those laws to the facts in the Complaint.

Petitioner alleges that PGW has impermissibly conditioned establishment of service at a new address upon payment of charges associated with an alleged meter bypass at a previous address. Petitioner testified that she is requesting service at a different address than the one where the alleged meter bypass took place. There is nothing in the Public Utility Code that restricts the establishment of service under these circumstances. Under 52 Pa. Code § 56.35(a), a utility may only require payment of an outstanding balance as a requirement of furnishing service for which the applicant is "legally responsible and ... was billed properly." Section 1407 of the Code gives Petitioner, who is low-income, the right to establish service at a new address without paying the full balance. *See* 66 P.A. C.S. § 1407 (c)(2)(iii). Under 52 Pa. Code § 56.191(d), PGW could only request payment of an entire outstanding

¹ This characterization of Petitioner's claims appears to be neither useful nor accurate. The legal issues in this case are significant and involve denial of service based on an alleged meter bypass at a prior address where Petitioner was not the most recent customer prior to PGW's claimed discovery of a meter bypass. Moreover, the severe consequences Petitioner continues to endure as a result of PGW's unlawful behavior cannot, and should not, be viewed as "standard" by any measure.

balance if the customer is requesting service at the address where the balance accrued.² In addition to the Public Utility Code and Commission Regulations, Section 8.3.C of PGW's own tariff prohibits it from refusing gas service to persons not responsible for unauthorized use of gas and Petitioner has specifically pled that she is not responsible for any alleged meter bypass. Petition at ¶ 12; Tr. at 33.

Evidence presented in the Petition and at the hearing shows that, at a minimum, the answers to these legal questions require further legal and factual investigation. Petitioner testified that she is applying for service at a new address, that she was not responsible for or aware of a meter bypass at 4244 N. Hicks Street, and that she was willing to enter a payment agreement to restore service. Tr. at 25, 33-34, 51-52. PGW presented no evidence showing that Petitioner was responsible for the alleged meter bypass at 4244 N. Hicks Street.

Petitioner's Complaint raises additional, substantial legal questions including whether PGW can condition enrollment in a Customer Assistance Program upon payment of these charges, whether the amount PGW has billed her is correct and reasonable, and whether in denying her application for new service, PGW has violated its duty to provide Petitioner with reasonably continuous service pursuant to 66 Pa. C.S. § 1501. Petitioner has met her burden and has shown she has a clear right to relief under the standard for Interim Emergency Relief.

2. *Petitioner has proved that her need for relief is immediate.*

The second prong of the interim emergency relief standard requires Petitioner to show that her need for relief is immediate. 52 Pa. Code § 3.6(b)(2). Petitioner is in immediate need of gas service for heat, cooking, and sanitation. The Commission has held that the deprivation of gas service could establish an immediate need under 52 Pa. Code § 3.6(b)(2). *See Fink*, WL 5011629 at *7; *Harris v. UGI Utilities*, 2004 WL 1151528, at *3 (Pa. PUC Feb. 12, 2004). In *Harris*, the Commission found that an immediate need for relief is present when the petitioner will experience an economic hardship if it is

² The regulation explicitly includes an exception for fraud or theft related to the four year rule, but there is no exception with regard to establishing service. The regulation is focused on restrictions to establishing service at the same address where the bill accrued rather than a new address where, under § 56.35(a), PGW can only condition service on payment of charges that a customer is legally responsible for.

ultimately proven that the utility violated the Code or Commission Regulations. *Id.* The Commission agreed with the ALJ's determination that economic detriment was immediate to the petitioners because without access to gas heat they were unable to avail themselves of the gas company's programs, which would help them afford their heating bills, and because it was winter and the need for heat was constant. *Id.*

Here, Petitioner faces a similar immediate need for gas service. She has been reliant upon an electric space heater and an electric hot plate because she cannot access natural gas service through PGW. Tr. 34-40. Petitioner is unable to enroll in PGW's Customer Responsibility Program and other PGW programs to ensure that she receives affordable bills. Tr. 49-52. PGW will only permit the Petitioner to establish service if she pays more than \$5,300 in contested charges. Tr. 49. Petitioner is a low wage worker and cannot pay PGW \$5,300. Tr. 49. If it is ultimately determined that PGW's conduct violated the Public Utility Code and Commission Regulations, Petitioner will have had to rely on electric appliances to meet her needs for heating, cooking, and hot water throughout the pendency of the underlying formal complaint proceeding. Petitioner's need for heat, cooking gas, and hot water is constant.

In the Order, ALJ Pell found that Petitioner's need for relief is not immediate because she has been living without gas service for nearly eight months. Order at 10-11. The Petitioner has lived without natural gas service solely because PGW has conditioned her ability to establish service upon payment of estimated meter bypass charges. After being denied service, Petitioner swiftly sought relief by using the legal mechanisms available to her to dispute PGW's determination. Petitioner has contested PGW's denial of new service at 1763 N. Croskey Street since prior to September 25, 2018 when she filed her informal complaint with the Commission's Bureau of Consumer Services. P-2. Petitioner filed her formal complaint against PGW on November 26, 2018. In addition, Petitioner was only recently able to secure legal representation in this matter in February 2019. Order at 2. The Petition was filed on March 14, 2019. Order at 3. Further, Petitioner's need for natural gas is continuous. Petitioner has a daily need for heat, cooking gas, and hot water.

ALJ Pell also concluded that the Petitioner's need for relief is not immediate because she has alternative living arrangements available to her that she used in the past. Order at 11. Petitioner did not claim in her testimony, nor did PGW establish, that Petitioner has a permanent alternative housing option available to her. Petitioner's need for natural gas service is not less immediate simply because she has a charitable relative or friend who *might* provide her with temporary shelter which she has no legal right to demand or maintain. Petitioner testified that she is living in her home without natural gas service and relying on electric appliances for heat, cooking, and hot water. PGW did not successfully rebut this portion of Petitioner's testimony.

3. Petitioner has proved that she would suffer irreparable injury if relief is not granted.

The third prong of the interim emergency relief standard requires Petitioner to show that her injury would be irreparable if relief is not granted. 52 Pa. Code § 3.6(b)(3). Petitioner established that she has experienced irreparable harm because she is unable to reunify with her minor children in her home until she obtains an account from PGW at the property.

At the hearing, Petitioner introduced P-1, Permanency Review Orders from the Family Court of Philadelphia, which indicate that Petitioner can reunify with her children only after Petitioner establishes an account with PGW. Although PGW sought to establish on cross examination that subsequent Family Court Orders omit that statement, Respondent's counsel acknowledged in closing arguments that PGW had been subpoenaed to appear in Family Court "because it was the court's understanding that the only reason that the Petitioner didn't have gas was because PGW was holding her responsible for her husband's debt and that Court didn't feel like that should be permitted to continue." Tr. 165. PGW's counsel further stated that PGW appeared in Family Court "and the Court made whatever determinations that it made after PGW was done presenting its answers." Tr. 166. PGW did not successfully rebut Petitioner's testimony that the subsequent court orders were issued only after PGW informed the Family Court that PGW would not put an account in Petitioner's name unless she paid over \$5,300 and that PGW would not offer Petitioner a payment arrangement. Tr. 128-129.

ALJ Pell did not dismiss Petitioner's contention that she is unable to reunify with her children due to her inability to establish PGW service. Instead, ALJ Pell concluded that Petitioner did not establish irreparable harm "since the Family Court and DHS are responsible for the Petitioner's children's safety and well-being, and because she has alternative living arrangements available to her." Order at 12. ALJ Pell did not correctly analyze whether Petitioner has established that her injury would be irreparable if relief is not granted. The Commission has found that irreparable harm is harm that cannot be adequately compensated by damages. *Shondra Rushing*, No. F-2015-2461147, 2015 WL 1754538 at *13 (Pa. PUC Apr. 9, 2015) (internal citations omitted). Petitioner testified that not a day goes by that she does not yearn for her children and that it is unbearable for her to not be able to care for her children and make sure they are safe. Tr. 38-39, 125. Petitioner stated that the safety of her children is in jeopardy. Tr. 103. She testified that one of her minor children was assaulted by an adult staff member at his foster care facility. Tr. 108-109. Petitioner testified that her children tell her that they live in a constant state of fear. Tr. 122. She also testified that she and her children have never been able to grieve together and heal as a family following the death of her husband, the children's father. Tr. at 127. Petitioner established that she and her children are suffering from the types of emotional and mental harm that a later award of damages or the granting of her complaint will be wholly inadequate to compensate.

ALJ Pell's determination that the Petitioner has not proved irreparable harm because the Family Court and DHS are responsible for the children's welfare fails to account for the emotional harm and trauma that Petitioner's children are experiencing as a result of continued separation from their only living parent. In addition, the Order fails to acknowledge that Petitioner is also suffering from irreparable harm due to the fact that she is unable to reunify with her children in her home. The United States Supreme Court has long recognized a mother's fundamental interest in the "companionship, care, custody, and management" of her children, and the child's "reciprocal interest" in maintaining the "emotional attachments that derive from the intimacy of daily association" with their mother. *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *Smith v. Org. of Foster Families for Equality & Reform*, 431 U.S. 816,

854 (1977). Further, a large body of research has recognized that removal and placement into foster care traumatizes children in complex ways.³

Petitioner's Complaint raises numerous, substantial legal questions about whether PGW's conduct violates the Public Utility Code and Commission Regulations. *See Supra* Section II.A.1. The Commission has found that where conduct violates a statutory mandate, irreparable injury will have been established. *Rushing*, 2015 WL 1754538 at 13 (citing *PUC v. Israel*, 356 Pa. 400 (1947)).

4. *Petitioner has proved that the requested relief is not injurious to the public interest.*

The fourth prong of the interim emergency relief standard requires Petitioner to show that the relief requested is not injurious to the public interest. 52 Pa. Code § 3.6(b)(4). Petitioner has shown that the relief requested 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*, No. C-20077427, 2007 WL 1484284, at *12 (Pa. PUC May 15, 2007).

ALJ Pell's determination that providing relief to Petitioner would be injurious to the public interest is not based on substantial evidence. The ALJ reasoned that granting the Petition would be injurious to PGW's ratepayers who will ultimately have to pay, through PGW's uncollectible expenses, for gas service that was used but not paid for at 4244 N. Hicks Street. Order at 12-13. As above, this finding appears to prematurely reach the merits of this dispute in which Petitioner has specifically claimed that she is not responsible for any alleged meter bypass and that PGW is not legally permitted to condition her service on the payment of charges for which she is not responsible. Contrary to Judge Pell's reasoning, the record shows that Petitioner endeavored to make a payment agreement, largely out of duress, for the alleged meter bypass charges--even though she states she is not responsible for it--but PGW refused to take her money. Tr. 51-52. In addition, she offered PGW funds from grant assistance to

³ See Delilah Bruskas, *Children in Foster Care: A Vulnerable Population at Risk*, 21 J. CHILD AND ADOLESCENT PSYCHIATRIC NURSING 70 (2008); see also Catherine R. Lawrence et al., *The Impact of Foster Care on Development*, 18 DEVELOPMENT AND PSYCHOPATHOLOGY 57, 58-59 (2006).

pay the debt. Between these various payments, PGW would likely recoup estimated charges it claims to be owed, resulting in no harm to ratepayers or PGW.

Ultimately, the Commission must conduct a balancing of the potential and actual harms in determining whether to grant the interim emergency relief sought here. The real, immediate, ongoing and irreparable harm to Petitioner and her children is significant and must be afforded great weight. Petitioner testified that she continues to experience substantial hardships in trying to live at her new address without gas service. She also testified that her five children are currently residing in foster care placements across the city. Although PGW contends that there is no harm because the children are “safe” in placement, Petitioner provided un rebutted testimony of the physical and emotional harm they continue to experience. PGW’s minimization of the harm to Petitioner and her family and PGW’s suggestion that perhaps Petitioner’s children would be better kept out of her care is grossly inappropriate, uninformed, and dangerous. Tr. 172. The harm to Petitioner and her family if relief is not granted significantly outweighs any minimal harm that would result to PGW or its ratepayers.

B. The Commission can order interim emergency relief to establish new service at 1763 N. Croskey Street

Petitioner has established that a grant of injunctive relief to establish service at 1763 N. Croskey Street is appropriate. The Commission has authorized various forms of interim relief. *See Shondra Rushing v. Pennsylvania-American Water Company*, 2015 WL 1754538 (Pa. PUC Apr. 9, 2015). In *Rushing*, the Commission affirmed an ALJ’s grant of interim relief to permit a water utility to terminate water service to the petitioner’s property until a water leak was fixed, notwithstanding the opposition of the petitioner and even though the petitioner had a complaint pending against the water company. *Id.* The Commission found that the grant of relief was appropriate because the water company had established each requirement of the Commission’s Regulations for interim emergency relief. *Id.* at 14. Here, the Petitioner is seeking emergency relief to establish new natural gas service at her home so that she can access natural gas for heat, cooking, and hot water; and so that she can reunify with her children in her

home. A review of the record demonstrates that Petitioner has met her burden to show that this form of emergency relief is warranted.

C. The ALJ improperly applied the standard for “emergency” in this proceeding.

1. The ALJ erred in holding that Petitioner must prove an “emergency” as defined in 52 Pa. Code § 3.1 to qualify for interim emergency relief.

Subchapter A of Chapter 3 of the Commission’s Regulations governs special commission actions, including both “ex parte emergency orders” and “interim emergency relief.” ALJ Pell erroneously held that Petitioner is not entitled to interim emergency relief because she failed to provide evidence of an “emergency” as defined in 52 Pa. Code § 3.1. ALJ Pell cited to *Peoples Natural Gas Co. v. PUC*, 555 A.2d 288, 291 (Pa. Cmwlth. 1989) for the proposition that a petitioner is not entitled to interim emergency relief where there is no evidence of an emergency. Order at 8.⁴ In so doing, ALJ Pell incorrectly construed the Commission’s regulations and imposed the standard applicable to “ex parte emergency orders” on Petitioner’s request for “interim emergency relief.”⁵

As set forth in Section 3.1 of the Commission’s regulations, an “Emergency order” is defined as follows:

An ex parte order issued by a single Commissioner, the Commission, the Commission’s Director of Operations or the Commission’s Secretary *in response to an emergency*.

Consistent with this definition, Section 3.2 of the Commission’s regulations require that a Petitioner support a request for an ex parte emergency order with a verified statement “which establishes the existence of an emergency.” 52 Pa. Code § 3.2(b). As a result, an *ex parte* emergency order can only issue if the petitioner shows that there exists “a situation which presents a clear and present danger to life

⁴ It must be noted that *Peoples Natural Gas Co., v. PUC* involved the requested grant of a temporary certificate of public convenience, a matter dissimilar in myriad respects (including the applicable provisions of the Public Utility Code) from the instant petition.

⁵ The Commission should be guided by sound principles of construction when interpreting the meaning of defined terms such as “interim emergency order.” The definition provided in the Commission’s regulations requires that this term be afforded its “peculiar and appropriate meaning” (see, e.g., 1 Pa. C.S. 1903(a)). Requiring a Petitioner to demonstrate an “emergency” in order to seek an “interim emergency order” would deviate from the express meaning of the term as defined.

or property or which is uncontested and requires action prior to the next scheduled public meeting.” 52 Pa. Code § 3.1 (definition of “emergency”).

In contrast, an “Interim emergency order” is defined as follows:

An interlocutory order issued by a presiding officer which is immediately effective and grants or denies injunctive relief during the pendency of a proceeding.

The standard for seeking an “interim emergency order” does not require the petitioner to establish the existence of an emergency, but instead requires a verified statement of facts “which establishes the existence of *“the need for interim emergency relief.”* 52 Pa. Code § 3.6(b). Accordingly, and in contrast to an *ex parte* emergency order, a Petitioner need not demonstrate that the relief is necessary in response to an “emergency” as defined. This is, of course, a sensible distinction given not only that the relief requested in an interim emergency order is limited to the duration of the underlying proceeding, and the fact that an *ex parte* order should only issue upon a showing of necessity.

Although the Commission often lists the definition of emergency under § 3.1 in its opinions concerning interim emergency relief, case law and the regulations are clear that the standard a Petitioner must meet is set forth in 52 Pa. Code § 3.6 and does not require a showing of “clear and present danger to life or property.” The standard includes four prongs, described in detail above, and mirrors the standard for temporary injunctive relief in other courts. Indeed, interim emergency relief has been granted and affirmed in the absence of such danger, including where customers would face loss of heating source and disruption caused in their daily lives⁶, where customers would face loss of internet broadband service⁷, where a water leak was causing water to be wasted⁸, and where an individual was without gas in the winter⁹.

Petitioner submits that she has satisfied each of the requirements of 52 Pa. Code § 3.6, none of which require proof of a clear and present danger to life or property. Furthermore, as discussed below,

⁶ *Fink*, No. A-2015-2466653, 2015 WL 5011629, at *4 (Pa. PUC Aug. 20, 2015).

⁷ *Core*, No. P-2011-2253650, 2011 WL 5121092 (Pa. PUC Sept. 23, 2011).

⁸ *Shondra Rushing*, No. F-2015-2461147, 2015 WL 1754538, at *12 (Pa. PUC Apr. 9, 2015).

⁹ *Danee Slaton v. PGW*, No. C-2010-2155867 (Pa. PUC Feb. 19, 2010).

Petitioner has nonetheless shown that her circumstances constitute an emergency for which interim emergency relief is appropriate.

2. *Petitioner has nonetheless demonstrated the existence of an “emergency” as defined by 52 Pa. Code § 3.1.*

In the Order, ALJ Pell cited to *Peoples Natural Gas Co., v. PUC*, 555 A.2d 288, 291 (Pa. Cmwlth. 1989) for the proposition that a petitioner is not entitled to interim emergency relief where there is no evidence of an emergency. Order at 8. As discussed above, the *Peoples Natural Gas Co. v. PUC* case is largely inapplicable here, as it concerned the grant of a temporary certificate of public convenience under 66 Pa. C.S. § 1103(d), a matter which may be addressed on an ex parte basis under circumstances in no way analogous to the instant petition. In *Meghan Flynn et al. v. Sunoco Pipeline*, No. C-2018-3006116, 2019 WL 632237 (Pa. PUC Feb. 1, 2019), the Commission affirmed a denial of a petition for interim emergency relief where an ALJ found that the petitioners failed to establish an emergency because “petitioners’ claims and arguments as to the *hypothetical* consequences [...] have little foundation.” *Id.* at *7 (emphasis added). *Flynn* indicates that a grant of interim emergency relief requires the petitioner to show substantial evidence of real, immediate and irreparable harm. Speculative or hypothetical harm is insufficient. Petitioner has made the requisite showing of real, immediate, and irreparable harm.

Petitioner testified that she is currently living without natural gas for heat, cooking, and running hot water for sanitation. Tr. 34-40. Petitioner testified that she has been burdened mentally and physically by the lack of natural gas service. Tr. 34. Petitioner’s testimony establishes the existence of an emergency as it demonstrates real, immediate, irreparable and ongoing harm. The Commission has repeatedly recognized that electric space heaters are a dangerous heating source,¹⁰ and they are included on the list of unsafe alternative heating sources for purposes of cold weather survey reporting pursuant to 52 Pa. Code § 56.100(i).

¹⁰ In its Prepare Now campaign literature, the Commission sites to a statistic from the United States Fire Administration that more than one-fifth of residential fires are related to the use of supplemental room heaters. Available at: https://www.puc.state.pa.us/general/consumer_ed/pdf/Heating_Safety_Tips.pdf

In addition to testimony about the tremendous hardship that she is experiencing every day that she remains without natural gas service, Petitioner introduced evidence to show that she is unable to reunify with her five minor children. Tr. 41-48; P-1. Petitioner testified that it is unbearable for her to not be able to care for her children and make sure they are safe and that her children tell her they live in constant fear. Tr. 38-39, 122, 125. Petitioner stated that the safety of her children is in jeopardy. Tr. 103. She submitted uncontested testimony that one of her minor children was assaulted by an adult staff member at his foster care facility. Tr. 108-109. Petitioner further testified that while she has been informed by DHS that the staff member has been suspended, she has been unable to gain assurance that her son is safe from further assault because DHS will not verify whether the staff member remains employed at her son's facility. Tr. 109. This testimony establishes the existence of an emergency as it demonstrates real, immediate, irreparable and ongoing physical, emotional, and potentially life-threatening harm.

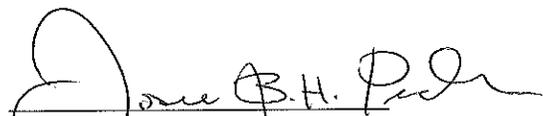
Further, while ALJ Pell concluded that Petitioner's evidence that she is living without natural gas service and unable to reunify with her children does not constitute a clear and present danger to life or property, ALJ Pell did not evaluate Petitioner's evidence using the second clause in the definition of "emergency" at 52 Pa. Code § 3.1. An emergency is also defined as a situation "which is uncontested and requires action prior to the next scheduled public meeting." In this proceeding, Petitioner's testimony about the hardships of living without natural gas and her children being separated from her is uncontested. Unless the Commission acts to remedy Petitioner's situation she will remain without access to essential utility services and unable to reunify with her children.

III. CONCLUSION

Wherefore, Petitioner respectfully requests that the Commission find that ALJ Pell incorrectly denied the Petition for Interim Emergency Order and grant Petitioner's request to establish PGW service at 1763 N. Croskey Street in Philadelphia pending any necessary further proceedings in this

matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Josie B. H. Pickens". The signature is written in a cursive style with a large initial "J".

Josie B. H. Pickens Esq. (Attorney ID: 309422)
Lydia R. Gottesfeld, Esq. (Attorney ID: 318974)
Robert W. Ballenger, Esq. (Attorney ID: 93434)

Attorneys for Complainant

Community Legal Services, Inc.
1410 W. Erie Avenue
Philadelphia, PA 19140

Dated: April 4, 2019

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TOMISHA PALMER	:	
Complainant	:	
	:	
	:	F-2018-3006197
	:	
	:	
PHILADELPHIA GAS WORKS	:	
Respondent	:	

CERTIFICATE OF SERVICE

Re: Tomisha Palmer v. Philadelphia Gas Works, Docket No. F-2018-3006197

I hereby certify that I have this day, served a copy of the foregoing **Brief in Opposition to the Order Denying Petition for Interim Emergency Relief and Certifying Material Question** in the manner and upon the persons listed below:

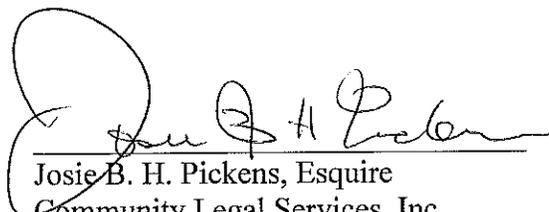
By First Class U.S. Mail, postage prepaid, and e-mail as indicated:

Administrative Law Judge Christopher Pell
Pennsylvania Public Utility Commission
801 Market Street
Suite 4063
Philadelphia, PA 19107
cpell@pa.gov

Tomisha Palmer
1763 N. Croskey Street
Philadelphia, PA 19121

Graciela Christlieb, Esq.
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122
Graciela.Christlieb@pgworks.com

Dated this 4thth day of April, 2019



Josie B. H. Pickens, Esquire
Community Legal Services, Inc.
1410 West Erie Avenue
Philadelphia, PA 19140