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April 4, 2019

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Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

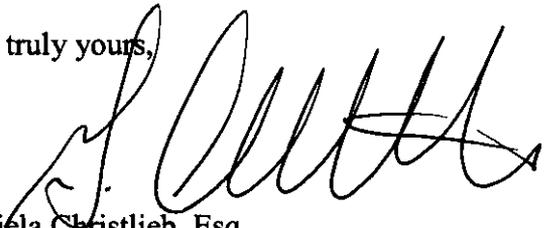
Re: Tomisha Palmer v. Philadelphia Gas Works, Docket No. F-2018-3006197

Dear Secretary Chiavetta:

Enclosed for filing is Philadelphia Gas Works' Brief in Support of Order Denying Petition in the above-captioned matter.

If additional information is required, please do not hesitate to contact the undersigned. Thank you for your assistance in the matter.

Very truly yours,


Graciela Christlieb, Esq.

cc: Administrative Law Judge Christopher P. Pell
Josie Pickens, Esq.
Lydia Gottesfeld, Esq.
Robert Ballenger, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Tomisha Palmer	:	
Complainant	:	
v.	:	Docket No. F-2018-3006197
	:	
Philadelphia Gas Works	:	
Respondent	:	

**BRIEF IN SUPPORT OF 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 support of the denial of interim emergency relief. Respondent respectfully requests that the Commission find that ALJ Pell correctly denied the Petition and answer the certified question accordingly.

I. Petitioner has failed to satisfy the standard for interim emergency relief under 52 Pa. Code § 3.6.

Pursuant to 66 Pa. C.S. § 332(a), the party seeking emergency relief bears the burden of proving that the facts and circumstances meet all four of the requirements in the Commission's Regulation at 52 Pa. Code § 3.6(b). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, Petitioner's evidence must be more convincing, by even the smallest amount, than that presented by PGW. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, the Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

A. Petitioner failed to establish that her right to relief is clear.

To satisfy this element, Petitioner must establish that her claim raises substantial legal questions. Petitioner has failed to do this. It is not enough to assert that one's claim raises substantial legal questions; the legal questions raised must actually be substantial.

The legal questions raised by Petitioner are the same questions that could be, and usually are, raised by any individual whose gas service was terminated due to theft. And while those questions most certainly require the ALJ to conduct a full and fair hearing regarding Petitioner's claims, they are not substantial. The ALJ did not err in finding that Petitioner had failed to establish that her right to relief is clear despite acknowledging that there were legal questions raised in this case.

Moreover, Petitioner's claim that she raises a substantial legal issue by alleging that PGW has impermissibly conditioned establishment of service at a new address upon payment of charges associated with a theft at a previous address is inaccurate. Petitioner has repeatedly characterized herself as an "applicant" who is not seeking "reconnection" because she is seeking to initiate service at a new address, but relies on the language of 66 P.A. C.S. § 1407 and 52 Pa. Code § 56.191, which both apply to reconnection at the same address, to support her position that, under 52 Pa. Code § 56.35(a), she does not have to pay the theft balance before initiating service, yet she completely ignores 52 Pa. Code § 56.285, which applies to applicants as 52 Pa. Code § 56.35(a) does.

Finally, Petitioner mischaracterizes the ALJ's Order Denying the Petition by stating that he "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." Petitioner's Brief in Opposition at 3. The ALJ was pointing out that, given the testimony provided, the right to the relief Petitioner was seeking (reconnection without payment as a precondition) was not clear. Petitioner's relief may be reconnection without payment as a precondition, but it may also be a different amount required as a precondition of reconnection, which is not an error; it is in keeping with the reasoning found in *A. Edward Schwartz v. Delaware and Hudson Railway Company*, Docket Nos. P-2011-2241780, and C-2011-2237486 (2011).

B. Petitioner failed to establish that her need for relief is immediate.

Petitioner has failed to establish that her need for relief is immediate as her being without gas service is not a new or recent development. *United Transportation Union, Pennsylvania State Legislative Board v. Norfolk Southern Railway Company*, Docket Nos. P-2011_2267892, and C-00019560 (2011), *A. Edward Schwartz v. Delaware and Hudson Railway Company*, Docket Nos. P-2011-2241780, and C-2011-2237486 (2011), *Meghan Flynn, et al v. Sunoco Pipeline, L.P.*, Docket Nos. P-2018-3006117, and C-2018-3006116 (2019).

Petitioner's reliance on *Harris v. UGI Utilities*, Docket No. C-20032233 (2004) to establish an immediate need due to economic hardship is misplaced. In *Harris*, the petitioners' had to rely on propane for heat after having their natural gas service terminated and the propane companies require customers to pay in full upon delivery. Petitioner testified that she is relying on electric service to fill the needs that were previously filled by natural gas service. There is no indication on the record that the electric company Petitioner is relying on for service is denying her access to any programs that would help her afford her electric bill. In fact, there is nothing on the record to indicate that Petitioner would qualify for any of the programs she claims she is missing out on.

C. Petitioner failed to establish that injury would be irreparable if relief is not granted.

At the hearing, Petitioner introduced P-1, Permanency Review Orders from the Family Court of Philadelphia, in an effort to establish that Petitioner can reunify with her children *only* after Petitioner establishes an account with PGW. However, P-1 establishes no such thing. P-1 only serves to establish that Family Court of Philadelphia was under the mistaken impression that what was preventing Petitioner from establishing gas service in her name was PGW's requirement that she pay the balance on her husband's account. Subsequent Permanency Review Orders from the Family Court of Philadelphia, which were presented by PGW and marked as R-2, show that, once the Family Court was disabused of this belief, it refrained from further addressing Petitioner's attempts to establish gas service.

Neither P-1 nor R-2 indicates in any way that PGW is the bar to reunification with her children that Petitioner claims it is. Petitioner's argument that she is unable to reunify with her children due to inability to reestablish PGW service based entirely on uncorroborated hearsay testimony. "Hearsay evidence, properly objected to, is not competent evidence to support a finding of the agency...Hearsay evidence, admitted without objection, will be given its natural probative effect and may support a finding of an agency if it is corroborated by any competent evidence in the record ... a finding of fact based solely on hearsay will not stand."

Walker v. Unemployment Compensation Board of Review, 367 A. 2d 366, 370 (Pa. Cmwlth. 1976); *see also Chapman v. Unemployment Compensation Board of Review*, 20 A. 3d 603, fn. 8 (Pa. Cmwlth. 2011); *Catherine J. Frompovich v. PECO Energy Company*, Docket No. C-2015-2474602 (2018) (*Frompovich*). In an effort to establish irreparable harm, Petitioner also alleges that she and her children are suffering severe harm and trauma and that one of her children was

assaulted at a foster care facility, but, again, failed to provide anything other than her own uncorroborated testimony to establish that her children were anything other than in safe and appropriate placements as stated in Permanency Review Orders from the Family Court of Philadelphia.

D. Petitioner failed to establish that the requested relief is not injurious to the public interest.

The public has an interest in people being safe. Two days before the hearing, the Family Court of Philadelphia issued Permanency Review Orders certifying that Petitioner's children are in placements that are necessary, appropriate, and safe. Petitioner is arguing that the Commission should change the *status quo* pending the outcome of her case, which runs counter to what interim emergency relief is meant to do¹, so that those children can be removed from those placements and reside with her. This argument is being made by Petitioner without establishing that such an action would not be injurious to the public interest. Petitioner insists that the Commission must engage in a balancing test, but has provided nothing other than her uncorroborated testimony to balance against the determinations made by the Family Court of Philadelphia.

II. The ALJ properly applied the standard for “emergency” in this proceeding.

“(a) A party may submit a petition for an interim emergency order during the course of a proceeding. The petition shall be filed with the Secretary and served contemporaneously on the Chief Administrative Law Judge and on the parties.

(b) To the extent practicable, a petition for an interim emergency order must be in the form of a petition as set forth in § 5.41 (relating to petitions generally). A petition for an interim emergency order must be supported by a verified statement of facts which establishes the existence of the need for interim **emergency** relief, including facts to support the following:

- (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.
- (4) The relief requested is not injurious to the public interest.”

52 Pa. Code § 3.6 (emphasis added).

Petitioner's argument that the ALJ improperly applied the standard for “emergency” in this proceeding is without merit. The section where § 3.6 is found is called “Emergency Relief”

¹ *Zebra v. Pittsburgh School District*, 449 Pa. at 437, 296 A.2d at 750.

and provides a definition for “emergency.” The cases Petitioner relies on² use the definition of “emergency” as provided in 52 Pa. Code § 3.1.

III. Conclusion

WHEREFORE Respondent respectfully requests that the Commission find that ALJ Pell correctly denied the Petition and answer the certified question accordingly.

Respectfully submitted,



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April 4, 2019

² *Fink.*, No. A-2015-2466653, 2015 WL 5011629, at *4 (Pa. PUC Aug. 20, 2015), *Core*, No. P-2011-2253650, 2011 WL 5121092 (Pa. PUC Sept. 23, 2011), *Shondra Rushing*, No. F-2015-2461147, 2015 WL 1754538, at *12 (Pa. PUC Apr. 9, 2015). Petitioner’s Brief in Opposition at 12.

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Complainant	:	
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Philadelphia Gas Works	:	
Respondent	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of Philadelphia Gas Works' Brief in Support of Order Denying Petition upon the participants listed below, in accordance with the requirements of 52 Pa.Code §§ 1.55 and 5.421(b)(4):

By electronic and first-class mail:

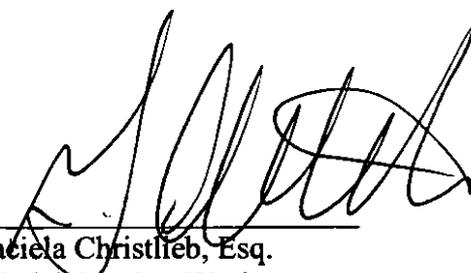
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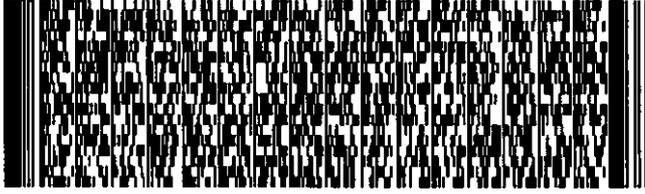
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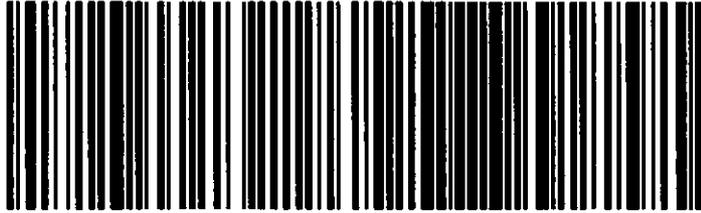


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