

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF PENNSYLVANIA**

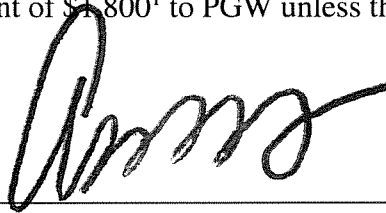
IN RE	:	Chapter 7
	:	
DEBBIE ESOLA,	:	
	:	Bankruptcy No. 18-17737-AMC
DEBTOR	:	
_____	:	
	:	
PHILADELPHIA GAS WORKS,	:	
	:	
PLAINTIFF	:	
	:	Adv. Proc. No. 19-00015-AMC
V.	:	
	:	
DEBBIE ESOLA,	:	
	:	
DEFENDANT	:	
_____	:	

ORDER

AND NOW, this 29th day of October 2019, for the reasons given in the accompanying Opinion, it is hereby ORDERED that:

1. Judgment is entered in favor of the plaintiff, Philadelphia Gas Works (“PGW”), against the debtor, Debbie Esola (“Debtor”), in connection with its nondischargeability claim against the Debtor under 11 U.S.C. § 523(a)(4) in the amount of \$8,982.03; and

2. Before PGW is required to restore gas service to the Debtor going forward, the Debtor must make an adequate assurance of payment of \$1,800¹ to PGW unless the parties agree otherwise.²



Honorable Ashely M. Chan
United States Bankruptcy Judge

¹ See Trial Tr. 135:18-24 (PGW representing that if Debtor made a down payment of \$1,800 to PGW, her gas service would be restored), 144:9-15 (PGW describing the \$1,800 down payment as adequate assurance of payment), 154:14-17 (describing proposed arrangement for restoration of service as a down payment of \$1,800 and payment of the remainder of the \$8,982.03 in a payment plan over time), 155:22-25 (Court explaining to Debtor the \$1,800 down payment would be her adequate protection payment), 161:19-162:1 (PGW explaining it would accept \$1,800 as a down payment to restore gas service and have Debtor pay the remainder of the \$8,982.03 through a payment plan).

² The Court had hoped that it may have some discretion to modify PGW's \$1,800 adequate assurance of payment demand under § 366(b) to restore Debtor's gas service, given that the Debtor has a young, autistic daughter and cannot afford to pay the \$1,800 deposit in a lump sum. See Trial Tr. 118:11, 138:10-139:20. However, upon further research, it is clear that, given the public welfare and safety concerns involved with utility theft and unauthorized usage, courts have uniformly determined that unauthorized utility usage and theft constitute valid grounds for refusal to restore service or to condition restoration of service upon payment of restitution and that § 366(b), which ordinarily gives the Court discretion to modify adequate assurance demands, does not apply in cases of unauthorized utility usage and theft. *Memphis Light, Gas & Water Div. v. Farley*, 135 B.R. 292, 294 (W.D. Tenn. 1991); *Hendrickson v. Philadelphia Gas Works*, 672 F. Supp. 823, 834 (E.D. Pa. 1987); *In re Morris*, 66 B.R. 28, 29 (E.D. Mich. 1986); *In re Scearce*, 2005 WL 4030139, at *1 (Bankr. S.D. Ohio 2005); *In re Broadnax*, 37 B.R. 909, 911 (Bankr. E.D. Pa. 1984); *Webb v. Philadelphia Gas Works (In re Webb)*, 38 B.R. 541, 544-45 (Bankr. E.D. Pa. 1984). Ultimately, a utility has the discretion to refuse service for any reason which would validly constitute a ground for refusal if the debtor were not in bankruptcy, with a single exception for nonpayment of past services. E.g., *Memphis Light, Gas & Water*, 135 B.R. at 294; *In re Morris*, 66 B.R. at 29; *In re Webb*, 38 B.R. at 544. As stated in the seminal case on this issue, *Webb v. PGW*, "we consider safety to be the paramount issue in this case and we do not believe the bankruptcy court should order a public utility to restore service in cases of tampering when that utility is under a duty to maintain public safety and welfare." *In re Webb*, 38 B.R. at 545. Unfortunately, in light of the foregoing, the Court does not have discretion to modify PGW's demand for adequate assurance of payment in the amount of \$1,800 before restoring gas service to the Debtor.