**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held February 8, 2018

Commissioners Present:

Gladys M. Brown, Chairman

Andrew G. Place, Vice Chairman

Norman J. Kennard

David W. Sweet

John F. Coleman, Jr.

Harry Larry Bierley C-2016-2553988

v.

National Fuel Gas Distribution Corporation

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed by Harry Larry Bierley (the Complainant) on September 20, 2017, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Jeffrey A. Watson, issued on August 14, 2017. Replies to the Exceptions of the Complainant were filed by National Fuel Gas Distribution Corporation (NFGDC) on October 2, 2017. On consideration of the pleadings and the record in this proceeding, we shall grant the Exceptions, in part, deny them, in part, and modify the Initial Decision, consistent with this Opinion and Order.

**History of the Proceeding**

In his Formal Complaint (Complaint), filed on June 27, 2016, the Complainant alleged the existence of incorrect charges on his bill and requested a payment arrangement. Complaint at ¶ 4. The Complainant essentially averred that on May 20, 2016, he received an unusually high gas bill from NFGDC that resulted from a gas leak at his property. Further, he averred that the gas leak resulted in health issues. The Complainant stated that NFGDC should have notified him of the gas leak in a timely manner. As relief, the Complainant requested a refund of the amount alleged to have been overpaid to Respondent as a result of the alleged gas leak. Complaint at ¶ 5.

On July 20, 2016, NFGDC filed an Answer admitting, in part, and denying, in part, the material allegations set forth in the Complaint along with New Matter. NFGDC denied that there are incorrect charges on the Complainant’s gas bill and averred that a gas leak existed on the Complainant’s house line, for which NFGDC is not responsible.

The Complainant filed a Reply to NFGDC’s Answer and New Matter on September 12, 2016. The Complainant alleged, *inter alia*, that the Company’s failure to warn him of a gas leak at 242 East 32nd Street, Erie, Pennsylvania 16504 (service location or service address) constituted “carelessness, reckless endangerment, and dereliction of duty.” Reply at ¶ 13. Furthermore, the Complainant requested that the Commission award him five hundred thousand dollars ($500,000) as compensation for the alleged harm he “suffered and is still suffering.” Reply at ¶ 13.

On September 22, 2016, NFGDC filed Preliminary Objections to the Reply of the Complainant. NFGDC asserted that the Commission does not have the power and legal authority to award monetary damages. Additionally, NFGDC stated that the Commission does not have subject matter jurisdiction over negligence or recklessness claims. Therefore, NFGDC requested that its Preliminary Objections be granted and that the Commission (1) strike all allegations in the Reply regarding monetary damages; (2) prohibit the Complainant from introducing at hearing any evidence purporting to address monetary damages; (3) dismiss the Complainant’s negligence and recklessness claims; and (4) grant NFGDC any other relief as may be just and reasonable under the circumstances.

On March 23, 2017, the ALJ issued an Interim Order granting, in part, and denying, in part, the Preliminary Objections of NFGDC.[[1]](#footnote-1)

An evidentiary hearing was held in this matter on May 18, 2017. The Complainant appeared *pro se* and testified, while NFGDC was represented by counsel who presented the testimony of two witnesses. The record in this proceeding consists of 101 transcript pages, as well as Complainant Exhibits A through C and Respondent Exhibits one through eight, which were admitted into evidence.

In his Initial Decision issued on August 14, 2017, ALJ Watson recommended that the Complaint be dismissed because the Complainant failed to carry his burden of proof on his allegations that the Company violated the Public Utility Code (“Code”), Commission Regulations, or Orders, or was otherwise responsible for incorrect charges on his gas bill. The ALJ also rejected the customer service allegations raised in the Complaint. I.D. at 8-9; Conclusions of Law Nos. 9, 12, 13.

As previously noted, on September 20, 2017, the Complainant filed Exceptions to the Initial Decision. NFGDC filed Replies to Exceptions on October 2, 2017.

**Background**

In his Complaint, the Complainant alleges he received a “huge gas bill” on May 20, 2016, for services as of May 4, 2016.[[2]](#footnote-2) Upon receiving the bill, the Complainant called NFGDC to contest the disputed bill. During the telephone conversation on May 20, 2016, NFGDC explained to the Complainant that because his prior three months of gas usage were estimated, his gas bill now reflected an actual meter reading and consisted of gas usage that had not been billed previously.[[3]](#footnote-3) Tr. at 65. NFGDC had the Complainant read the gas meter over the telephone, which confirmed that NFGDC’s reading used to calculate the disputed May 2016 bill was correct.

Once the NFGDC representative became aware during the telephone call that the Complainant could smell gas, the NFGDC representative dispatched an emergency order and sent a representative to the service location to check for a potential leak. I.D. at 3; Finding of Fact No. 7. In light of a potential gas leak at the service location, the NFGDC representative advised the Complainant to open the doors and windows, evacuate to a safe distance, and watch for service personnel to arrive and evaluate the situation. I.D. at 4; Finding of Fact No. 8.

A service representative arrived at the service location less than five minutes after the Complainant’s phone call with NFGDC ended, and the gas leak was identified on the Complainant’s private service line to his clothes dryer, isolated, and made safe within nineteen minutes of his arrival at the service location. I.D. at 4; Finding of Fact Nos. 9-10. Additionally, the service representative advised the Complainant via a written Receipt of Advice to have a professional contractor fully repair and check the service line to his dryer, because the leak was in the Complainant’s private gas line. I.D. at 4; Finding of Fact No. 11.

On May 24, 2016, the Complainant contacted NFGDC again to advise that the leak was repaired by a contractor and to ask for an adjustment of the disputed bill as a result of the gas leak on his private service line. I.D. at 4; Finding of Fact No. 12; Tr. at 67. During the telephone call, NFGDC explained to the Complainant that because the gas leak occurred on his house line, the Complainant was responsible for the disputed gas bill. I.D. at 4; Finding of Fact No. 13. NFGDC subsequently explained that the Complainant could purchase a gas detector for the service location if he was concerned with a gas leak occurring in the future. During this May 24, 2016 telephone call, NFGDC offered the Complainant a payment arrangement for the disputed bill. Accordingly, NFGDC enrolled the Complainant into NFGDC’s Low-Income Residential Assistance (LIRA) Program, in which the Complainant receives a discount based on his income. I.D. at 4; Finding of Fact No. 14; Tr. at 61-62.

As a result of the above referenced payment arrangement that the Complainant entered into with NFGDC, as of the evidentiary hearing date of May 18, 2017, the Complainant had a credit balance of $116. Tr. at 60; Respondent Exh. 1.

**Discussion**

**Legal Standards**

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Code. 66 Pa. C.S. § 332(a), which provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992).

“Burden of proof” means to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies,* 364 Pa. 45, 70 A.2d 854 (1950). In order to prevail in this proceeding, the Complainant has the burden of showing that NFGDC is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Company of Pennsylvania,* 72 Pa. P.U.C. 196 (1990).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to NFGDC. If the evidence presented by NFGDC is of co-equal value or “weight,” the burden of proof has not been satisfied. The Complainant now has to provide some additional evidence to rebut that of NFGDC. *Burleson v. Pa. PUC,* 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff’d,* 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC,* 768 A.2d 1217 (Pa. Cmwlth. 2001).

The burden of proof for “high bill” complaints has been explained in [*Waldron v. Philadelphia Electric Company,* 54 Pa. P.U.C. 98 (1980)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&pubNum=0000930&cite=54PAPUC98&originatingDoc=I11f69ddd703211e7b92bf4314c15140f&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) (*Waldron*), and its progeny. In *Waldron*, we stated that while the accuracy of the meter is an important factor in resolving billing disputes, it is not the sole criterion. We indicated that we would also consider the following factors: the billing history of the complainant; any change in the number of occupants residing at the household; the potential for energy utilization; and any other relevant facts or circumstances that are brought to light during the complaint proceeding. *Waldron* at 100.

We explained the burden of proof set forth in *Waldron* as follows:

[T]he *Waldron* Rule allows a complainant to establish a *prima facie* case in a “high bill” complaint by showing that the disputed bill is abnormally high when compared to prior usage patterns and his or her pattern of usage has not changed *or by providing other relevant evidence showing that the disputed bill is unreasonably high*. In evaluating a “high bill” complaint, the Commission may consider such evidence as “the billing history of the account, any change in usage patterns (such as a change in the number of occupants residing in the household or potential energy utilization), *and any other relevant facts or circumstances that come to light during the proceeding*.”

*Thomas v. PECO Energy Company,* Docket No. C-2010-2187197 (Order entered November 15, 2011) at 5 (quoting *Bennett v. The Peoples Natural Gas Company,* Docket No. C-2009-2122979 (Order entered October 13, 2010)) (emphasis in original).

Additionally, Section 1501 of the Code requires that every public utility “furnish and maintain adequate, efficient, safe, and reasonable service and facilities and to make all such repairs, changes, alterations, substitutions, extensions and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons, employees and the public.” 66 Pa. C.S § 1501.

However, as a general proposition, neither the Commission’s Regulations nor the Code require public utilities to provide constantly flawless service. *Bennett v. UGI Central Penn Gas, Inc.,* Docket No. F-2013-2396611 (Initial Decision issued April 22, 2014; Final Order entered May 29, 2014). We affirmed the same principle in *Emerald Art Glass v. Duquesne Light Co.,* finding that Section 1501 of the Code does not translate into a duty to provide perfect service. Docket No. C-00015494 (Order entered June 14, 2002).

**ALJ’s Initial Decision**

ALJ Watson made fourteen Findings of Fact and reached thirteen Conclusions of Law. I.D. at 3-4, 12-13. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

The ALJ first addressed the Complainant’s claim that NFGDC failed to provide safe, adequate and reasonable service to the service location. The ALJ found that the Complainant failed to meet his burden of proof regarding this claim, noting that the Complainant’s evidence does not establish that the Company did anything that could be characterized as unreasonable service at any time relevant to this proceeding. I.D at 8.

The ALJ’s reasoning concerning this finding was based on three Conclusions of Law: (1) a public utility does not provide inadequate or unreasonable service merely because it failed to anticipate unforeseen or unusual circumstances;[[4]](#footnote-4) (2) NFGDC has no duty to inspect a Complainant’s internal service line and the Complainant is responsible for any leaks located on the customer side of the gas meter;[[5]](#footnote-5) and (3) at all times relating to the Complaint, NFGDC provided reasonable, safe, efficient and adequate service to the Complainant.[[6]](#footnote-6)

Conclusion of Law No. 11, was reached by the ALJ in response to the Complainant’s assertions that: (1) NFGDC should have informed him immediately when there was an increase in gas usage at the service location; (2) NFGDC “should have known” to investigate his home (even before there was any indication of a gas leak at the service location);[[7]](#footnote-7) and (3) NFGDC should have sent emergency medical personnel to the service location in addition to the service representative. I.D at 9.

The ALJ found no basis in any of these claims, pointing to the testimony supplied by NFGDC’s witness, Tim DeSanto, during the hearing, which indicated that the meter reading underlying the disputed bill was within the normal range. I.D. at 9. Mr. DeSanto further testified that according to NFGDC’s tariff, NFGDC was under no obligation or duty to inspect the Complainant’s personal gas line in his home prior to a leak being discovered. I.D at 10; Tr. at 78; Respondent Exh. 6. Additionally, the ALJ found that no evidence was presented as to why emergency medical personnel should have been sent to the Complainant’s home at the same time the service representative was dispatched to investigate a possible leak at the service location. I.D. at 9.

Conclusion of Law No. 12, was reached by the ALJ in response to the Complainant’s assertions that NFGDC should have inspected the Complainant’s personal gas lines at his service location when he bought house. Tr. at 42. Additionally, the Complainant asserts that NFGDC should conduct regular “sniffer” and visual inspections. Complainant M.B. at 2.

The ALJ found no basis for the Complainant’s assertion, noting again Mr. DeSanto’s testimony, in which he discussed NFGDC’s tariff that states in pertinent part that “[t]he responsibility for detecting leaks or defects in piping between the Company’s service connection and the point of consumption shall be upon the customer. The customer shall give immediate notice to the Company of inadequate, irregular or failing gas supply, leakage, abnormally high or low pressures, or any dangerous conditions.” Respondent Exh. 7. Mr. DeSanto testified that the positioning of the leak at the service location conforms to the above description, and therefore it is the responsibility of the Complainant to detect leaks that occur on his service line. I.D. at 10.

The ALJ found that based on the evidence, NFGDC acted reasonably at all times in response to the Complainant’s circumstances, including responding immediately to the Complainant’s potential gas leak, and ensuring the situation was safe for the Complainant and adhering to its policy throughout the duration of its dealings with the Complainant. Thus, in Conclusion of Law No. 13, the ALJ found that the Company provided reasonable, safe, efficient and adequate service. I.D. at 11.

Second, the ALJ addressed the Complainant’s assertion that NFGDC should provide him with a refund for the period when the leak existed. The ALJ found that the Complainant failed to establish any basis for his argument. I.D. at 11

ALJ Watson concluded that the Complainant failed to carry his burden of proof on his allegation that NFGDC violated the Code, Commission Regulations or Orders, or was otherwise responsible for incorrect charges on his gas bill and the customer service issues raised in the Complaint. He, therefore, recommended dismissal of the Complaint. I.D. at 11.

**Exceptions and Reply Exceptions**

Before addressing the Exceptions, we note that any issue or Exception that we do not specifically address shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider, either expressly or at length, each contention or argument raised by the Parties. Consolidated Rail Corp. v. Pa. PUC, 625 A.2d 741 (Pa. Cmwlth. 1993); *also* see, generally, University of Pennsylvania v. Pa. PUC, 485 A.2d 1217 (Pa. Cmwlth. 1984).

The Complainant’s Exceptions[[8]](#footnote-8) consist of five handwritten pages in which he generally expresses his disagreement with ALJ Watson’s rulings and his decision to dismiss the Complaint. The Complainant asserts that the ALJ erroneously concluded that he failed to establish a *prima facie* case in support of his claims and excepts to the ALJ’s finding that he did not meet his burden of proving the allegations in his Complaint.

The Complainant begins his Exceptions by averring that “[i]t is irrebuttable and irrefutable that the gas company is required to instantly check out complaints of suspected gas leaks in appliances or fixtures in a home.” Exc. at 1. Further, the Complainant submits that it logically follows that the Company bears responsibility for any harm that might evolve from a suspected gas leak in an appliance or fixture. The Complainant maintains that NFGDC should have dispatched someone to investigate things as soon as the Company noted a huge increase in consumption. *Id.* at 1-2.

The Complainant also excepts to the ALJ’s Finding of Fact No. 4, that states that “[t]he service location had two smoke alarm devices installed in the home at the time the Complainant moved into the home.” The Complainant asserts that his home had a smoke alarm and carbon monoxide detector, not two smoke alarms. Exc. at 2.

Additionally, the Complainant disagrees with the ALJ’s Finding of Fact No. 6, which states that “[o]n May 20, 2016, Complainant called the Company to contest the disputed bill.” The Complainant submits that he called NFGDC on May 20, 2016, to ask why the bill was so huge, not to contest the amount of the bill. Exc. at 2-3.

Further, the Complainant addresses the ALJ’s Finding of Fact No. 7, which states that “[b]ased on information provided during a telephone call with Complainant on May 20, 2016, the Company issued an emergency order to investigate a potential gas leak at the service location.” The Complainant states that “[a]ccording to information received directly from the Erie Fire Chief, in the circumstances, unknown to me at the time, the company should alert all emergency personnel due to the potential of great imminent harm. They did not.” Exc. at 3.

Finally, the Complainant takes issue with the ALJ’s Finding of Fact No. 14, by contending that the fact that NFGDC offered the Complainant a payment arrangement for the disputed bill is totally irrelevant. Exc. at 3.

In its Replies to Exceptions, NFGDC counters that the Complainant’s Exceptions contain no analysis and provides no legal or other basis to challenge the ALJ’s findings, which would warrant reversal by the Commission. R. Exc. at 2-3. Additionally, NFGDC points out that the Complainant’s Exceptions contain inappropriate attempts to introduce additional extra-record facts and opinions into this proceeding, which are not permissible after the close of record. R. Exc. at 3. Therefore, according to NFGDC, since the Initial Decision properly addressed and disposed of the issues raised by the Complainant in this proceeding, the ALJ correctly dismissed the Complaint. R. Exc. at 3.

**Disposition**

Upon review, we shall grant the Exceptions, in part, and deny them, in part.

Preliminarily, we shall discuss the Complainant’s challenge to Finding of Fact No. 4, which states that the service location had two smoke alarms devices installed. The Complainant avers that his home had a smoke alarm and a carbon monoxide detector. After review of the record, we agree with the Complainant. As such, we shall grant the Exception in part as to this argument and modify Finding of Fact No. 4 on page three of the ALJ’s Initial Decision to read as follows:

The service location had one smoke alarm device and one carbon monoxide detector installed in the home at the time Complainant moved into the home.

Notwithstanding our modification of this Finding of Fact, we are of the opinion that the Complainant merely misspoke during the evidentiary hearing. Additionally, the error contained in this Finding of Fact cannot form the basis for overturning the ALJ’s conclusions in his Initial Decision that the Complainant failed to meet his burden of proving that NFGDC violated the Code, Commission Regulations or Orders, or was otherwise responsible for incorrect charges on his gas bill and the customer service issues raised in the Complaint.

Regarding the high bill allegations, we have examined NFGDC’s Exhibit No. 3, which shows the following gas consumption by the Complainant during the disputed period:



During the same period for the following year, after the leak was repaired, the following gas consumption is shown:



Regarding the bills received on February 3, 2017 through May 4, 2017, the Complainant averaged approximately 3.7 CCFs per day with 0.2 consumption per degree day. During the previous year, the Complainant averaged 4 CCFs per day with 0.2 consumption per degree day, even with the leak on the gas line to his dryer. Allowing for usage variances brought about by differing weather conditions, the evidence clearly indicates that the Complainant’s natural gas bills for the period during which the alleged high bill occurred are fairly consistent with the usage experienced during the same period for the following year. Therefore, we conclude that there was no “huge” increase in consumption as the Complainant avers, and we concur with the ALJ’s finding that NFGDC was under no obligation or duty to inspect the Complainant’s personal gas line in his home prior to a leak being discovered. Accordingly, we shall deny the Complainant’s Exceptions pertaining to the high bill allegations.

In his Exceptions, the Complainant disputes Finding of Fact No. 6, wherein the ALJ stated that on May 20, 2016, the Complainant called the Company to “contest” the disputed bill. The Complainant asserts that he called NFGDC on May 20, 2016, to ask why the bill was so large, not to “contest” the amount of the bill. Merriam-Webster Dictionary defines “contest” as “demanding proof of the truth or rightness of.” Therefore, “contest” could also mean “to call into question.” As such, we believe there was a sufficient basis for the ALJ to conclude that the Complainant called NFGDC on May 20, 2016, to question or “contest” the amount of the bill. Accordingly, we shall deny the Exception as it pertains to this Finding of Fact.

Turning to the Complainant’s arguments pertaining to Finding of Fact No. 14, regarding the payment arrangement offered to the Complainant by NFGDC, we find that they are without merit. Although the Complainant asserts that this Finding of Fact is irrelevant, the record indicates that, as a result of the Complainant’s enrollment in the LIRA, the Complainant had a credit balance of $116 as of the evidentiary hearing date. Therefore, because of the Complainant’s May 24, 2016 telephone call with NFGDC, the Complainant now receives a discount for his natural gas service based on his income. Furthermore, the Complainant specifically requested a payment arrangement in his Complaint filed on June 27, 2016. Complaint at ¶ 4. Accordingly, we concur with the ALJ that this Finding of Fact is of significant importance and the Complainant’s Exception on this issue is denied.

Regarding the issue of unreasonable service, we concur with the ALJ’s determination that NFGDC has met its obligation under Section 1501 of the Code, 66 Pa. C.S § 1501, to provide adequate and reasonable service to its customers. The record in this proceeding establishes that NFGDC promptly issued an emergency order to investigate a potential gas leak at the service location, based on information provided during the Complainant’s May 20, 2016 telephone call with NFGDC. Tr. at 37. During the telephone call, NFGDC’s representative advised the Complainant to open the doors and windows, evacuate to a safe distance and watch for Company service personnel to arrive and evaluate the situation. Tr. at 66. NFGDC’s service representative arrived at the service location less than five minutes after the Complainant’s phone call with NFGDC ended. Tr. at 37. The service representative (1) identified the gas leak on the Complainant’s private service line to his clothes dryer, (2) isolated the leak, and (3) took all necessary action to ensure the situation was safe within nineteen minutes of his arrival at the service location. Tr. at 80. The service representative issued a Receipt of Advice to the Complainant, advising him to have a professional fully repair the service line to his clothes dryer, because the leak was on the Complainant’s private house gas line. Tr. at 67. Accordingly, we conclude that the Complainant did not meet his burden of proof regarding the allegation of unreasonable service. Additionally, the Complainant failed to establish any basis for his argument that NFGDC should provide him a refund for the period that the leak existed.

Regarding the Complainant’s Exception to Finding of Fact No. 7, pertaining to NFGDC’s issuance of an emergency order to investigate a potential gas leak, the Complainant does not dispute this finding, but attempts to provide extra-record facts and opinions, which he believes should be considered. Here, the evidentiary hearing occurred on May 18, 2017, and the record was closed on August 9, 2017. To the extent that the information presented in the Exceptions is indeed new evidence, we decline to consider it for lack of good cause.[[9]](#footnote-9) In light of our analysis above pertaining to the lack of evidence as to the allegations of unreasonable service, we conclude that the Complainant failed to show good cause for us to consider any extra record evidence set forth in the Exceptions. Accordingly, we shall deny the Complainant’s Exception as to Finding of Fact No. 7.

Although we agree with the ALJ’s dismissal of the Complaint, we shall as a final matter discuss NFGDC’s reading of the Complainant’s gas meter. As noted above, the Complainant’s meter is read by NFGDC on a bi-monthly basis; and what the Complainant perceived as a high bill, appears to be the result of NFGDC’s three consecutive estimated meter readings, from February 2016 to April 2016, prior to an actual meter reading on May 4, 2016. Additionally, the record indicates that NFGDC estimated the Complainant’s usage for four months in a row, from August 2016 to November 2016. Tr. at 69; Respondent Exh. 5. The reason given by NFGDC’s witness as to why there were not actual meter readings taken in March, September, or November of 2016 was simply because the meter is located inside the Complainant’s home and NFGDC was unable to gain access. Tr. at 69. There appears to have been no further testimony or cross examination as to this issue.

Regarding the three and four consecutive estimated meter readings obtained by NFGDC, we note that our Regulations at 52 Pa. Code § 56.12 contain provisions concerning a public utility’s reading of a customer’s meter. These Regulations state, in pertinent part, as follows:

**§ 56.12. Meter reading; estimated billing; customer readings.**

Except as provided in this section, a public utility shall render bills based on actual meter readings by public utility company personnel.

\* \* \*

(2) *Estimates for bills rendered on a monthly basis.* If a public utility bills on a monthly basis, it may estimate usage of service every other billing month, so long as the public utility provides a customer with the opportunity to read the meter and report the quantity of usage in lieu of the estimated bill. The resulting bills must be based on the information provided, except for an account when it is apparent that the information is erroneous.

\* \* \*

(3) *Estimates permitted under exigent circumstances.* A public utility may estimate the bill of a customer if extreme weather conditions, emergencies, equipment failure, work stoppages or other circumstances prevent actual meter reading.

We remind NFGDC that the phrase “other circumstances” under Section 56.12(3) of our Regulations should not be construed as to permit a utility to liberally claim the existence of an exigent circumstance to justify the estimation of a customer’s meter. Rather, such circumstances should be limited to those situations that are emergency in nature and in which the inability to obtain an actual meter reading is for a reason that is beyond the control of the Company. *Elizabeth Garstecki v. West Penn Power Company*, Docket No. F-2013-2395283 (Order entered July 8, 2015). Here, however, the record evidence in this proceeding does not support a finding that NFGDC has violated Section 56.12(2) of our Regulations.

**Conclusion**

Based upon our review of the Exceptions, the Initial Decision, and the record in this proceeding, we shall grant the Complainant’s Exceptions, in part, deny them, in part, and modify the Initial Decision, consistent with this Opinion and Order; **THEREFORE**,

**IT IS ORDERED:**

1. That the Exceptions filed by Harry Larry Bierley on September 20, 2017, to the Initial Decision of Administrative Law Judge Jeffrey A. Watson, issued on August 14, 2017, are granted, in part, and denied, in part, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Jeffrey A. Watson, issued on August 14, 2017, is adopted, as modified consistent with this Opinion and Order.

3. That the Formal Complaint filed on June 27, 2016, by Harry Larry Bierley against National Fuel Gas Distribution Corporation at Docket No. C-2016-2553988 is dismissed, consistent with this Opinion and Order.

4. That the proceeding docketed at C-2016-2553988 be marked closed.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: February 8, 2018

ORDER ENTERED: February 9, 2018

1. The Complainant’s claim for monetary damages was dismissed, however the Company’s remaining objections regarding alleged incorrect charges and service issues were denied. [↑](#footnote-ref-1)
2. The evidence established that the disputed bill was for the period April 5, 2016, through May 4, 2016, and unbilled usage from March 2016 in the amount of $130.24. [↑](#footnote-ref-2)
3. The Complainant’s gas meter is read by NFGDC on a bi-monthly basis. However, NFGDC was not able to gain access to the Complainant’s meter, located inside the Complainant’s home, in order to conduct an actual reading at the service location on March 3, 2016. Tr. at 69. [↑](#footnote-ref-3)
4. Conclusion of Law No. 11. [↑](#footnote-ref-4)
5. Conclusion of Law No. 12. [↑](#footnote-ref-5)
6. Conclusion of Law No. 13. [↑](#footnote-ref-6)
7. Tr. at 42-43. [↑](#footnote-ref-7)
8. We acknowledge that the format of the Complainant’s Exceptions does not strictly comply with Section 5.533(b) of our Regulations, 52 Pa. Code § 5.533(b), which requires that exceptions be numbered, identify the finding of fact and conclusions of law to which exception is taken, and cite to the relevant pages of the Initial Decision. Nevertheless, particularly because the Complainant is appearing *pro se*, we will accept the Exceptions as filed pursuant to Section 1.2(a) of our Regulations, 52 Pa. Code § 1.2(a), in order to secure a just, speedy, and inexpensive determination. [↑](#footnote-ref-8)
9. *See*, 52 Pa. Code § 5.431(b) (“After the record is closed, additional matter may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion.”) [↑](#footnote-ref-9)