

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Pa. P.U.C. Docket No. C-2008-2059242

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RAYMOND S. GIARDINA,

Complainant,

v.

NATIONAL FUEL GAS DISTRIBUTION CORPORATION,

Respondent.

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**NATIONAL FUEL GAS DISTRIBUTION CORPORATION'S REPLY  
TO THE EXCEPTIONS OF COMPLAINANT RAYMOND S. GIARDINA**

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In reply to the Complainant's Exceptions filed: March 25, 2009 and served by Secretary  
McNulty on March 26, 2009

Initial Hearing held: December 10, 2008

Initial Decision Issued by ALJ John H. Corbett, Jr.: March 5, 2009

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Maureen Geary Krowicki  
Pa. I.D. No. 89350  
National Fuel Gas Dist. Corp.  
P.O. Box 2081  
Erie, PA 16512  
(814) 871-8035

Attorney for National Fuel Gas  
Distribution Corporation

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REPLY TO THE EXCEPTIONS OF COMPLAINANT RAYMOND S. GIARDINA**

Pursuant to 52 Pa. Code § 5.535, the Respondent, National Fuel Gas Distribution Corporation (“Distribution”), by and through its attorney, Maureen Geary Krowicki, hereby files its Reply to the Exceptions of Complainant Raymond S. Giardina.

**I. INTRODUCTION**

The Exceptions of Complainant Raymond S. Giardina, in their entirety, violate 52 Pa. Code § 5.533(b) which states that “[e]ach exception must be **numbered** and **identify the finding of fact or conclusion of law** to which exception is taken and **cite relevant pages of the decision**.” 52 Pa. Code § 5.533(b) (emphasis added). Complainant’s Exceptions are in the form of a letter with a handwritten postscript (“Complainant’s Exceptions Letter”), which lacks numbering, fails to reference any finding of fact or conclusion of law to which exception is taken and does not cite relevant pages of the decision. As such, all exceptions contained in Complainant’s Exceptions Letter should be denied as improper.

In an effort to reply in some fashion to Complainant's Exceptions Letter, Respondent has attempted to separately number and restate each issue addressed in Complainant's Exceptions Letter and respond to them below while reserving Respondent's general reply that the entire document should be dismissed as improper.

## II. EXCEPTIONS

1. In Complainant's Exceptions Letter he contends that he was "never on a budget (NFG Exhibit B)".

This Exception is irrelevant. Nowhere in the Initial Decision or record is there a statement that Complainant is "on a budget." The only references to a "budget" are in NFG Exhibit B which includes Respondent's written statements that Complainant could call Respondent to "learn about our Direct Pay and Budget Plan options" and that one of the options available to pay the amount due was for Complainant to "arrange for an extended payment plan which will fit [his] budget." (NFG Exhibit B, Finding of Fact 13). Because the Initial Decision and the entire record do not allege that Complainant was on budget billing, Complainant's contention that he was "never on a budget" is irrelevant.

2. In Complainant's Exceptions Letter he contends that he called Respondent "about meter [sic] and asked to be there. They said I wasn't allowed. They called later and said the meter was 2% low, which was in the limitation."

This Exception should be denied because it: (1) is based on information that is not part of the record; (2) is irrelevant; and (3) is contrary to the evidence of record and should be denied. Whether Complainant asked to be present for meter testing and was refused is irrelevant as the meter tested within the appropriate limits. In

addition, although Complainant's Exceptions Letter states that the meter tested "2% low", the actual result was 0.8% slow. (Initial Decision Finding of Fact 18, N.T. 23-24, 38). Finally, nowhere in the record is there evidence to support the contention that Respondent asked to be present for the meter testing but was refused. This confusion is the exact reason one should not rely on facts not contained in the record when making formal exceptions.

3. In Complainant's Exceptions Letter he contends that he testified there was a dog in the area of his home and adds that it was penned and that he cannot see it unless he goes there.

This Exception should be denied because it: (1) is based on information that is not part of the record; and (2) was addressed, in part, in the Initial Decision. As addressed in the Initial Decision, Complainant did not dispute that a dog was in the vicinity affecting the meter reader's ability to gain access. (Initial Decision p. 7, N.T. 37-38). In addition, the record does not contain a reference to the allegation that Respondent cannot see a dog. This confusion is the exact reason one should not rely on facts not contained in the record when making formal exceptions.

4. In Complainant's Exceptions Letter he contends that what he complained about was the gas bill. Complainant adds that he pays his bills on the first of the month and that Respondent records the payment on the 15<sup>th</sup> or 16<sup>th</sup>.

This Exception should be denied because it is irrelevant. The Complaint in this matter involved bills Complainant received regarding a particular adjustment made to Complainant's account in July of 2008; at the hearing, Complainant further stated that he received too many adjustments and estimated bills and that

his bills were confusing. (Initial Decision p. 1, Finding of Fact, 7). The dates Complainant pays his bills and the dates those payments are credited are irrelevant to those issues and, therefore, should be denied.

5. In Complainant's Exceptions Letter he contends that he received five account statements from Respondent – three from the attorney for Respondent, one of which was discussed during the telephonic hearing.

This Exception should be denied because it: (1) is based on information that is not part of the record; and (2) is irrelevant. The number of account statements provided to Complainant is irrelevant as Complainant fails to state whether any errors existed and, if such errors existed, how the ALJ's treatment or non-discussion of the account statements constitutes a reason for exception. In addition, the record contains two account statements – one attached to Respondent's Answer and one submitted as NFG Exhibit B – not five. This confusion is the exact reason one should not rely on facts not contained in the record when making formal exceptions.

6. In Complainant's Exceptions Letter he contends that he stated to Administrative Law Judge Corbett that "7/17/08 that the comment was Co. Road [sic] 8002 and Verify Co. Road [sic] was 9005 on 7/23/08".

This exception is vague and unsubstantiated as well as irrelevant. Complainant fails to state whether any errors existed in the meter readings from July 17<sup>th</sup> and 23<sup>rd</sup> and, if such errors existed, how the ALJ's treatment or non-discussion of such errors constitutes a reason for exception. In addition, Complainant's statements about particular meter readings depicted on NFG Exhibit B are

immaterial as the Initial Decision concludes that the adjustment made to Complainant's account in July of 2008 was for an underestimation of usage discovered after an actual meter reading on July 23, 2008. (Initial Decision p. 7). Complainant fails to state whether any errors existed in that conclusion or if such errors constitute a reason for exception.

7. In Complainant's Exceptions Letter he contends, "the adjustment difference was 91.95. The original difference was 96.35 [sic – 96.36]".

This Exception does not appear to be a disagreement with any part of the Initial Decision but rather a restatement of the facts. In this regard, this Exception should be denied.

8. In Complainant's Exceptions Letter he contends, "on 6/16/08 E was 8899. Where did they get 8002? On 9/16/08 the estimate was 8928. Where did they get the 9005?"

This exception is contrary to the evidence of record, irrelevant and unsubstantiated and should, therefore, be denied. As stated in NFG Exhibit B, the estimated reading of 8928 was obtained on 7/16/08, not 9/16/08 as Complainant contends. Also, NFG Exhibit B states that the 8002 reading was obtained by a company reading on July 17, 2008 that was subsequently verified by the company on July 23, 2008 to be 9005. In addition, Complainant's statements and questions about the June and July meter readings are immaterial as the Initial Decision correctly concludes that the adjustment made to Complainant's account in July of 2008 was for an underestimation of usage discovered after an actual meter reading on July 23, 2008 (Initial Decision p. 7) and Complainant fails to state whether any errors existed in that conclusion. Finally, Complainant fails to state whether the

ALJ's treatment or non-discussion of the June and July meter readings constitutes a reason for exception.

9. In the handwritten post-script to Complainant's Exceptions letter, Complainant contends that the "Usage Comparison Report are [sic] not the same as my Nat Fuel Gas Bill."

This Exception should be denied because it is based on information that is not part of the record. As noted in the Initial Decision, Complainant offered no bills for review so any comparison to the usage comparison report is outside the record. (Initial Decision, p. 7). This confusion is the exact reason one should not rely on facts not contained in the record when making formal exceptions.

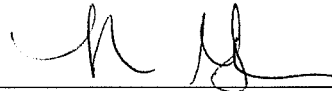
10. In the handwritten post-script to Complainant's Exceptions letter, Complainant states, "Please make them do Gas Bill Right without adj. Usage Comparison Report to be the same as Nat Fuel Gas Bills. I received 4 from Company 3 from Maureen Geary Krowicki, Esquire. Not the same as Nat Fuel Gas Bill."

This Exception should be denied because it: (1) is vague and unsubstantiated; (2) is based on information that is not part of the record; and (3) is irrelevant. It is not clear what Complainant is referring to when he states that he received "4 from Company 3 from Maureen Geary Krowicki, Esquire. Not the same as Nat Fuel Gas Bill." In addition, as noted in the Initial Decision, Complainant offered no bills for review; therefore, any comparison to the usage comparison report is outside the record. (Initial Decision, p. 7). This confusion is the exact reason one should not rely on facts not contained in the record when making formal exceptions.

WHEREFORE, Respondent, National Fuel Gas Distribution Corporation respectfully requests that the Commission deny the Exceptions of the Complainant for the reasons set forth above.

Respectfully submitted,

Dated: April 2, 2009



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Maureen Geary Krowicki  
Pa. I.D. No. 89350

National Fuel Gas Distribution Corporation  
P.O. Box 2081  
Erie, PA 16512  
(814) 871-8035

Attorney for Respondent: National Fuel Gas  
Distribution Corporation

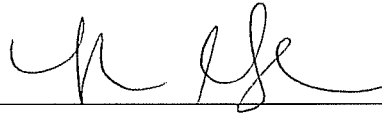
**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing National Fuel Gas Distribution Corporation's Reply to the Exceptions of Complainant Raymond S. Giardina were served on the following parties as indicated:

**VIA FIRST CLASS MAIL**

Raymond S. Giardina  
4890 Whipporwill Drive  
Hermitage, PA 16148

Dated: April 2, 2009

A handwritten signature in black ink, appearing to read 'M. Geary', written over a horizontal line.

Maureen Geary Krowicki