



National Fuel

Lee E. Hartz
Attorney

August 27, 2004

Mr. James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

ORIGINAL

RE: Dennis J. Bologna v.
National Fuel Gas
Distribution Corporation
Docket No. C-20043453

Dear Secretary McNulty:

Enclosed in connection with the above-referenced Complaint are: (1) an original and three copies of National Fuel Gas Distribution Corporation's Answer; and, (2) an original and three copies of National Fuel Gas Distribution Corporation's Motion to Dismiss for Lack of Standing.

Very truly yours,

Lee E. Hartz
(814) 871-8060

LEH/ejc

Enclosures

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

DENNIS J. BOLOGNA,

Complainant,

v.

NATIONAL FUEL GAS
DISTRIBUTION CORPORATION,

Respondent.

ANSWER

DOCKET NO. C-20043453

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ANSWER

For its Answer to the Formal Complaint ("Complaint") filed against it by Dennis J. Bologna ("Complainant"), National Fuel Gas Distribution Corporation ("Respondent") respectfully states as follows:

- 1) Paragraph one is admitted.
- 2) Paragraph two is denied. Correct name of Respondent is National Fuel Gas Distribution Corporation.
- 3) As to the allegations contained in paragraph three of the Complaint, Respondent states the following:
 - a) The allegations contained in paragraph 3(1) of the Complaint are admitted in part and denied in part. It is admitted only that Respondent refused to transfer the natural gas service account for the premises at 133 State Street, St. Mary's, PA, 15856 (the "Property") from the property owner, Dennis Bologna, to Elizabeth Carr without proof of transfer of property ownership. Respondent is without knowledge or information sufficient to form a belief as to the

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veracity of the allegation that Elizabeth Carr and Donald Sheetz were "purchasing" the Property and, therefore, said allegations are denied with strict proof thereof demanded.

b) The allegations contained in paragraph 3(2) of the Complaint are denied.

c) The allegations contained in paragraph 3(3) of the Complaint constitute a legal conclusion and do not call for a response. To the extent a response is deemed necessary, the allegations are denied. To the contrary, Respondent explained, in detail, its reasons for refusing to transfer the service.

4) The allegations contained in paragraph four of the Complaint constitute a demand for relief and do not call for a response.

WHEREFORE, National Fuel Gas Distribution Corporation requests that the Complaint be dismissed.

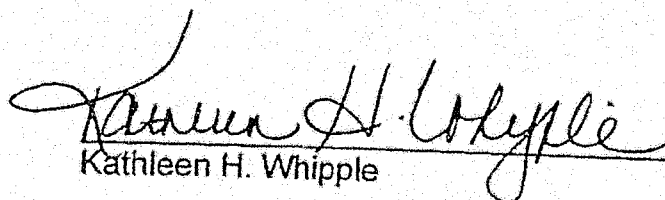
Respectfully submitted,



Lee E. Hartz
Pa. I.D. No. 87675
Attorney for National Fuel Gas
Distribution Corporation
P.O. Box 2081
Erie, PA 16512
(814) 871-8060

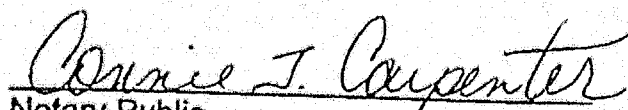
COMMONWEALTH OF PENNSYLVANIA)
) SS
COUNTY OF ERIE)

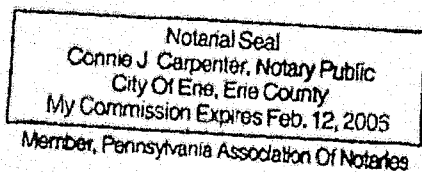
Kathleen H. Whipple, being duly sworn according to law, deposes and says that she is a Supervisor for National Fuel Gas Distribution Corporation; that she is authorized to and does make this Affidavit on its behalf; that the facts set forth in the within Answer are true and correct to the best of her knowledge, information and belief; and that she expects National Fuel Gas Distribution Corporation to be able to prove the same at a hearing thereof.


Kathleen H. Whipple

Sworn to and subscribed before me this

27th day of August, 2004.


Notary Public



BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DENNIS J. BOLOGNA,

Complainant,

v.

NATIONAL FUEL GAS
DISTRIBUTION CORPORATION,

Respondent.

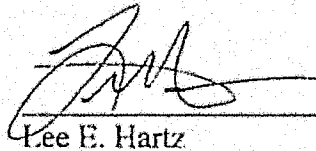
PROOF OF SERVICE

DOCKET NO. C-20043453

I hereby certify that I have this day served a true copy of the foregoing document upon the participant, listed below, in accordance with the requirements of § 1.54 (relating to service by a participant).

Mr. Dennis Bologna
429 N. St. Mary's Road
P.O. Box. 402
Saint Mary's, PA 15857

NATIONAL FUEL GAS
DISTRIBUTION CORPORATION



Lee E. Hartz
Pa. I.D. No. 87675
Attorney for National Fuel Gas
Distribution Corporation
P.O. Box 2081
Erie, PA 16512

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Dated: 08/27/2004

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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DENNIS J. BOLOGNA,
Complainant,

v.

NATIONAL FUEL GAS
DISTRIBUTION CORPORATION,
Respondent.

MOTION TO DISMISS FOR LACK
OF STANDING

DOCKET NO. C-20043453

MOTION TO DISMISS FOR LACK OF STANDING

NOW COMES, Respondent National Fuel Gas Distribution Corporation ("Respondent"), by and through its counsel, and files this Motion to Dismiss for Lack of Standing pursuant to 52 Pa. Code § 5.102(a)(3) and 66 Pa. C.S. § 701, and in support thereof avers as follows.

I. INTRODUCTION

1. Stripped to its essence, the complaint in this matter (the "Complaint") avers that Respondent has denied natural gas service, not to the Complainant, but rather, to two individuals who are not parties to this action. See Complaint ¶ 3. The Complaint does not allege, in any way, that Respondent denied service or otherwise acted unreasonably towards the actual Complainant. Because Complainant does not have a direct, immediate and substantial interest in the subject matter of this action, he does not have standing to bring this action.

II. BACKGROUND

2. On or about July 29, 2004, Dennis J. Bologna ("Complainant") filed the formal complaint that is the subject of this action.

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3. The Complaint alleges that Respondent "refused service" to Elizabeth Carr and Donald Sheetz, two individuals *not* a party to this action. See, Complaint ¶3(1).

4. The Complaint does not allege that Respondent refused service to the Complainant or otherwise acted unreasonably towards the Complainant. Rather, the Complaint alleges only that Respondent refused service to Ms. Carr and Mr. Sheetz, who were "purchasing" the Complainant's property and that Respondent "National Fuel failed to show cause and authority for their [sic] actions." See, Complaint ¶3.

III. ARGUMENT

5. Section 710 of the Public Utility Code requires that the person filing a complaint must have an interest in the subject matter thereof. See 66 Pa. C.S. § 701. Further, in order to have standing in an action before the Public Utility Commission, that interest must be direct, immediate and substantial. See, e.g., Pa. Natural Gas Assoc. v. T.W. Phillips Gas & Oil Co., 75 Pa. PUC 598, 604 (1991).

6. The Complaint fails to establish that Mr. Bologna has such an interest in this instance. To the contrary, the Complaint alleges only that Respondent refused to provide gas service to third parties, and not that Respondent refused service to Complainant or otherwise acted unreasonably towards Complainant.

7. Since Respondent did not refuse service to Mr. Bologna, Mr. Bologna does not have standing to bring this action on behalf of Ms. Carr and/or Mr. Sheetz.

8. To the extent Ms. Carr and/or Mr. Sheetz honestly did desire natural gas service at the premises and feel they were unjustifiably denied such service, Ms. Carr and Mr. Sheetz must bring their own Complaint against Respondent.

9. Under Pennsylvania law, the Public Utility Commission is granted discretion to “dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.” 66 Pa. C.S. § 703(b); 52 Pa. Code § 5.21(d).

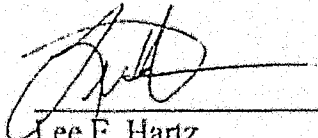
10. Due to the lack of standing of the Complainant, it is proper that the Public Utility Commission dismiss this complaint.

11. In addition, it is questionable whether the Public Utility Commission is able to award the relief requested in Paragraph 4 of the Complaint. Here, Complainant seeks the wholly civil remedies of: (a) an injunction (“direct National Fuel Gas to cease interfering with my business dealings”); and, (b) monetary damages (“direct NFG to pay all damages caused by their [sic] actions.”) See, Complaint ¶ 4.

IV. CONCLUSION

12. For the foregoing reasons, Respondent, National Fuel Gas Distribution Corporation respectfully requests that the Complaint filed by Dennis J. Bologna at Docket Number C-20043453 be dismissed, with prejudice.

Respectfully submitted,



Lee E. Hartz
Pa. I.D. No. 87675
Attorney for National Fuel Gas
Distribution Corporation
P.O. Box 2081
Eric, PA 16512
(814) 871-8060

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Mr. Dennis J. Bologna
429 North St. Mary's Road
P.O. Box 402
St. Mary's, PA 15857

NATIONAL FUEL GAS
DISTRIBUTION CORPORATION

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AUG 27 2004 11:09 AM

Lee E. Hartz
Pa. I.D. No. 87675
Attorney for National Fuel Gas
Distribution Corporation
P.O. Box 2081
Erie, PA 16512

Dated: 08/27/2004