

Kathleen A. Ryan
717 237 4904
kathleen.ryan@bipc.com

409 North Second Street
Suite 500
Harrisburg, PA 17101-1357
T 717 237 4800
F 717 233 0852
www.buchananingersoll.com

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VIA E-FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Harry Larry Bierley v. National Fuel Gas Distribution Corporation;
Docket No. C-2016-2553988

Dear Secretary Chiavetta:

On behalf of National Fuel Gas Distribution Corporation, I have enclosed for electronic filing the Main Brief of National Fuel Gas Distribution Corporation in the above-captioned proceeding.

Copies have been served on all parties as indicated in the attached Certificate of Service.

Very truly yours,



Kathleen A. Ryan

KAR/tlg
Enclosure

cc: Administrative Law Judge Jeffrey A. Watson (w/encl.)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

HARRY LARRY BIERLEY

v.

**NATIONAL FUEL GAS
DISTRUBUTION CORPORATION**

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Docket No. C-2016-2553988

**BRIEF
ON BEHALF OF
NATIONAL FUEL GAS DISTRIBUTION CORPORATION**

BUCHANAN INGERSOLL & ROONEY, P.C.

Kathleen A. Ryan, PA ID No. 314177
Alan M. Seltzer, PA ID No. 27890

409 North Second Street
Suite 500
Harrisburg, Pennsylvania 17101-1357

**Attorneys for
National Fuel Gas Distribution Corporation**

Dated: July 17, 2017

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I. STATEMENT OF THE CASE

A. Introduction

Harry Larry Bierley (“Complainant” or “Mr. Bierley”) filed a Formal Complaint (“Complaint”) against National Fuel Gas Distribution Corporation (“NFG” or the “Company”) on June 27, 2016 alleging he received a “high gas bill” for the period April 5, 2016 through May 4, 2016 in the amount of \$130.24 for gas provided by the Company to the Complainant’s residence located at 242 East 32nd Street, Erie, Pennsylvania 16504 (“Service Location”) (“Disputed Bill”).¹

As a result of a telephone conversation with the Complainant on May 20, 2016 regarding the Disputed Bill, the Company issued an emergency order to check for a potential gas leak at the Service Location. Upon investigation, the Company representative dispatched to the Service Location: (i) found that the line to the Complainant’s clothes dryer had a gas leak, (ii) turned off the gas to the dryer, and (iii) took all appropriate action to ensure that the Service Location was safe for the Complainant. The Company representative also advised the Complainant in writing to have a contractor repair and check the valve on his dryer.

When the Complainant contacted the Company again on May 24, 2016 to request an adjustment of his gas bill as a result of the leak on the gas line to his clothes dryer, the Company explained that because the gas leak occurred on the Complainant’s house line, the Company was not responsible for it. As a result, the Company informed the Complainant he was responsible for paying the Disputed Bill.

¹ The Company did not provide an actual reading of the Complainant’s gas meter at the Service Location on March 4, 2016 because it was unable to access the meter. Access issues constitute exigent circumstances that excuse the Company from billing based on actual meter data, consistent with 52 Pa. Code § 56.12(4). Therefore, the Disputed Bill included gas usage at the Service Location that had not been billed to the Complainant previously.

For the reasons set forth below, the Complaint should be dismissed and the relief requested by the Complainant denied. Clear and convincing evidence demonstrated that:

- The gas leak was on the Complainant's line to his dryer at the Service Location, which is an internal gas line.
- Because the leak was on the Complainant's house line and not on the Company's facilities or equipment, the Company has no duty other than to shut off the leaking appliance to ensure the area is safe, and to notify the customer of the issue.
- When information relayed to the Company suggested a potential for a gas leak at the Service Location, the Company promptly issued an emergency order and a Company service representative arrived at the Service Location within five minutes.
- As soon as the Company service representative discovered that the gas line to the dryer had a leak, he turned off the gas to the appliance and took all appropriate action to ensure the situation at the Service Location was safe for the Complainant.

Because the Complainant has failed to carry his burden of proof establishing that the Company committed any violation of the Public Utility Code, 66 Pa.C.S. § 101 et seq. ("Code") or any regulation, order or rule that the Pennsylvania Public Utility Commission ("Commission") has authority to administer, the Complaint should be dismissed.

B. Procedural History

On or about June 27, 2016, the Complainant filed with the Commission the Complaint against the Company alleging he received a high gas bill as a result of a gas leak on his internal gas line at the Service Location.

On or about July 1, 2016, the Complaint was served upon the Company via electronic mail.

On July 20, 2016, the Company filed an Answer admitting in part and denying in part the material allegations set forth in the Complaint along with New Matter.

On September 12, 2016, the Complainant filed a Reply to the Company's Answer and New Matter.

On September 22, 2016, the Company filed Preliminary Objections to the Reply of the Complainant.

On October 4, 2016, the Complainant filed an Answer to the Company's Preliminary Objections.

On March 21, 2017, a Notice was issued by the Commission scheduling the matter for hearing on April 24, 2017 before Administrative Law Judge Jeffrey Watson ("ALJ"), and the ALJ issued a Prehearing Order.

The ALJ issued on March 23, 2017 an Interim Order Granting in Part and Denying in Part the Preliminary Objections of NFG.

An evidentiary hearing was held in this matter on May 18, 2017. The Complainant appeared *pro se*.

On May 19, 2017, the ALJ issued an Interim Order Setting Briefing Schedule ("Briefing Order").

The Company submits this Brief in accordance with the briefing schedule established in the Briefing Order.

II. PROPOSED FINDINGS OF FACT

1. The Complainant is Harry Larry Bierley, who resides at 242 East 32nd Street, Erie, Pennsylvania 16504 ("Service Location"). (N.T. 12:1-2).

2. The Respondent is National Fuel Gas Distribution Corporation, a jurisdictional public utility providing residential gas service in the Commonwealth of Pennsylvania to the Complainant.

3. This Complaint and dispute concern the Complainant's Disputed Bill, and a gas leak on his private gas line to his clothes dryer located inside the Service Location.

4. The Complainant has resided at the Service Location since January of 2016. (N.T. 19:12-14, 30:3-4; Compl. Exhibit A).

5. The Service Location had two smoke alarm devices installed in the home at the time the Complainant moved into the home. (N.T. 32:2-18).

6. On May 20, 2017, the Complainant received the Disputed Bill, which was for gas service provided by the Company to the Service Location from April 5, 2016 through May 4, 2016, in the amount of \$130.24. (N.T. 24:14-15; Compl. Exhibit C).

7. On May 20, 2017, the Complainant called the Company to contest the Disputed Bill. (N.T. 25:20-25; NFG Exhibit 4).

8. Based on information provided during a telephone call with the Complainant on May 20, 2017, the Company issued an emergency order to investigate a potential gas leak at the Service Location. (N.T. 37:4-15; NFG Exhibit 7).

9. In light of a potential gas leak at the Service Location, the Company 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. (N.T. 66:15-25; NFG Exhibit 4).

10. A Company service representative ("Service Representative") arrived at the Service Location "less than 5 minutes" after the Complainant's phone call with the Company ended. (N.T. 37:19-20).

11. The Service Representative (i) identified a gas leak on the valve of the Complainant's private service line to his clothes dryer, (ii) isolated the leak and (iii) took all

necessary action to ensure the situation was safe within nineteen minutes of his arrival at the Service Location. (N.T. 80:11-14; NFG Exhibit 7).

12. The Service Representative issued a Receipt of Advice to the Complainant, advising the Complainant to have a professional fully repair the service line to his clothes dryer, because the leak was on the Complainant's private gas line. (N.T. 82: 22-25; NFG Exhibit 8).

13. The Complainant called the Company on May 24, 2016 to ask for an adjustment of the Disputed Bill as a result of the gas leak on his private house gas line. (N.T. 67:12-14; NFG Exhibit 4).

14. On the call, Service Representative informed the Complainant that because the gas leak occurred on the Complainant's private house line, the Complainant was responsible for paying the Disputed Bill. (N.T. 67:14-17; NFG Exhibit 4).

15. The Service Representative also informed the Complainant that, if he was concerned about not being able to detect a gas leak in the future, he could purchase a gas detector to alert him to potential future leaks. (N.T. 67:17-20; NFG Exhibit 4).

16. The Company offered the Complainant a payment arrangement for the Disputed Bill. (N.T. 67:21-22; NFG Exhibit 4).

III. STATEMENT OF THE QUESTIONS PRESENTED

Q. Whether the Complainant has met his burden of proof under Code Section 332(a) by a preponderance of the evidence that the Company has failed to provide safe, adequate and reasonable gas service to the Service Location?

A. *Proposed answer: No*

Q. Whether the Company rebutted any *prima facie* case established by the Complainant?

A. *Proposed answer: Yes*

IV. APPLICABLE LEGAL STANDARDS

A. Adequate, efficient, safe and reliable service

Code Section 1501 contains the substantive legal standard applicable to this proceeding. Under Code Section 1501, every public utility has a duty to “...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.”² As a general proposition, neither the Commission’s regulations nor the Code require public utilities to provide constantly flawless service.³

The Commonwealth Court has ruled that Code Section 1501 requires a complainant to establish that a public utility violated its duty to provide reasonable service in order to sustain a complaint brought under this section:

We hold that in order for the PUC to sustain a complaint brought under this section, the utility must be in violation of its duty under this section. Without such a violation by the utility, the PUC does not have the authority, when acting on a customer’s complaint, to require any action by the utility.⁴

B. Burden of proof

Code Section 332(a) provides that the proponent of a rule or order has the burden of proof in a Commission proceeding,⁵ except as otherwise provided in Code Section 315.⁶ “Burden of proof” means a duty 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

² 66 Pa.C.S. § 1501.

³ *Bennett v. UGI Central Penn Gas, Inc.*, Docket No. F-2013-2396611 (Final Order entered April 10, 2014).

⁴ *West Penn Power Co. v Pa. P.U.C.*, 478 A.2d 947, 949 (Pa. Cmwlth. 1984) (footnote omitted).

⁵ 66 Pa.C.S. § 332(a).

⁶ 66 Pa.C.S. § 315.

party.⁷ In order to prevail in this proceeding, the Complainant has the burden of showing that the Company is responsible or accountable for the problem described in the Complaint.⁸ The Complainant must establish his case by a preponderance of the evidence.⁹

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility.¹⁰ If a utility does not rebut that evidence, a complainant will prevail.¹¹ If the utility rebuts a complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence.¹² The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on the complainant.¹³

Furthermore, substantial evidence in the record must support the decision of the Commission.¹⁴ The term "substantial evidence" means such relevant evidence that a reasonable mind may accept as adequate to support a conclusion.¹⁵ More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.¹⁶ In addition, the

⁷ *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

⁸ *Patterson v. Bell Telephone Company of Pennsylvania*, Docket No. F-8966524 (Final Order entered February 8, 1990), *Feinstein v. Philadelphia Suburban Water Company*, Docket No. 20822 (Final Order entered October 6, 1976).

⁹ *Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600 (Pa. Cmwlth. 1990), alloc. den., 529 A.2d 654, 602 A.2d 863 (1992).

¹⁰ *Heller v. Indian Spring Water Co.*, C-2012-2334240 (Final Order entered June 7, 2013)(citing *Replogle v. Pennsylvania Electric Company*, Docket No. F-06727378 (Final Order entered October 9, 1980)), and *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ See, e.g., Section 704 of the Administrative Agency Law, 2 Pa.C.S. § 704, *Yellow Cab Company v Pa. P.U.C.*, 524 A.2d 1069 (Pa. Cmwlth. 1987).

¹⁵ *Norfolk & Western Ry. Co. v. Pa. P.U.C.*, 489 Pa. 109, 413 A.2d 1037 (1980).

¹⁶ *Norfolk & Western Ry. Co. v. Pa. P.U.C.*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

offense must be a violation of the Code, the Commission's regulations, or an outstanding order of the Commission.¹⁷

Accordingly, the record in this case must be reviewed to determine whether the Complainant has satisfied his burden of proof, i.e., whether the Complainant has established by a preponderance of the evidence that the Company has failed to provide safe, adequate and reasonable service to the Service Location and that the Complainant is not responsible for the Disputed Bill. And, any finding that the Company has provided unreasonable service also must be supported by substantial record evidence.

V. SUMMARY OF THE ARGUMENT

The Complainant is not entitled to any relief under any of the theories he has asserted.

First, the Complainant has failed to establish a *prima facie* case that the Company provided unreasonable service or committed any violation of the Code, regulation, or order of the Commission. The evidence presented at hearing does not establish any wrongdoing on the Company's part.

Second, to the extent the Complainant could be considered to have carried his burden of proof (which he did not do), the Company successfully rebutted any *prima facie* case regarding alleged unreasonable service or with significant evidence unchallenged by the Complainant at hearing. The Company provided substantial record evidence rebutting all claims set forth by the Complainant. The Complainant failed to rebut any of the Company's evidence.

VI. ARGUMENT

A. The Complainant failed to meet his burden of proof.

As the party seeking a rule or order from this Commission in this case, i.e., a finding that Company had failed to provide reasonable service to the Service Location, the Complainant has

¹⁷ 66 Pa.C.S. § 701; *West Penn Power Co. v Pa. P.U.C.*, 478 A.2d 947, 949 (Pa. Cmwlth. 1984).

the burden of proof in this matter.¹⁸ As explained above, the Complainant's entire case-in-chief consisted mainly of his allegation that, even in the absence of any facts or other basis to believe there was a gas leak at the Service Location, the Company nevertheless should have inspected the inside of the Service Location to determine if a gas leak was present.

The Complainant supported his case with the following evidence: (i) his testimony consisting of his lay opinions and beliefs regarding what he believed the Company should have done;¹⁹ and (ii) three exhibits, including the Receipt of Advice issued to him from the Company as a result of the gas leak, the Disputed Bill, and another undisputed bill for gas service provided to the Service Location.²⁰

Both the Code and the Commission's regulations require only that a public utility provide service that is reasonably continuous and without unreasonable interruptions.²¹ In *Re Metropolitan Edison Co.*,²² the Commission adopted the Recommended Decision of ALJ John H. Corbett, Jr. as follows:

The Code only requires a public utility to furnish reasonable service. 66 Pa. Code § 1501. It does not mandate perfect service nor must a public utility provide the best possible service. Most certainly, a public utility is not a guarantor of either perfect service or the best possible service.

The same principle was affirmed in *Emerald Art Glass v. Duquesne Light Co.*: “[s]ection 1501 of the Code does not translate into a duty to provide ‘perfect’ service.”²³

Applied here, 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

¹⁸ See *supra*, p. 13-14.

¹⁹ N.T. 22, 24, 41, 42, 43, 44, 45.

²⁰ See Complainant's Exhibits A, B, and C.

²¹ See *supra*, p. 12-13.

²² 80 Pa. PUC 662, 672 (1993).

²³ Docket No. C-00015494 (Order entered June 14, 2002), at 7 (“Emerald Art Glass”); see also *Analytical Laboratory Services, Inc. v. Metropolitan Edison Co.*, Docket No. C-20066608 (Order entered December 21, 2007).

proceeding. When the Complainant informed the Company's Service Representative of a situation that could potentially involve a gas leak or emergency, the Company dispatched a Service Representative *within five minutes* of the call, and the identified gas leak was secured within *nineteen minutes* of his arrival.²⁴ Regarding the Complainant's allegation that the Company "should have known" to investigate his home (even before there was any indication of a gas leak at the Service Location), the Complainant admitted during the hearing that *he never requested the Company to come inspect his home before the May 20 call.*²⁵ Because the Complainant admitted he had no indication there was a gas leak on his private gas line, there was no reason for the Company to conduct an investigation inside the Service Location.²⁶ Additionally, as stated above, the Company has no duty to inspect a customer's private house line.²⁷

At hearing, the Complainant also claimed that: (1) the Company should have informed him immediately when there was an increase in gas usage at the Service Location; and (2) the Company should have sent emergency medical personnel to the Service Location in addition to the Service Representative.²⁸ These claims are meritless.

The Complainant's claim that the Company should have informed him about increased gas usage at the Service Location as a result of the gas leak was addressed by the Company's witness, Tim DeSanto, during the hearing.²⁹ Mr. DeSanto testified that if a meter reading is outside the typical range, a meter reader's handheld meter reading device will beep. This would prompt the meter reader to re-read the meter if the current reading was out of range. Also, if

²⁴ N.T. 37, 80.

²⁵ N.T. 42-43.

²⁶ N.T. 43: 11-12.

²⁷ N.T. 78, NFG Exhibit 6.

²⁸ N.T. 41, 73.

²⁹ N.T. 81.

there is a beep on the meter reading, a picture of the meter is taken and sent to the Company's billing department. In this case, the meter reading underlying the Disputed Bill was *within the normal range*.³⁰ Therefore, no picture was taken of the Complainant's meter and he was not notified of any increased usage by the Company.³¹

Additionally, there is no reason 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 gas leak at the Service Location. Mr. Bierley's statements of his fears, speculations, suspicions and opinions are not facts which could have put the Company on reasonable notice of the need to call upon additional resources beyond its own personnel.³² The Complainant provided no evidence showing that the Company's response constituted unreasonable service or was a violation of any provision the Commission has jurisdiction to administer. Therefore, the Complainant has failed to establish a *prima facie* case in support of his claims. He failed to carry his burden of proof and as a result, the Commission should dismiss the Formal Complaint.

B. The Company successfully rebutted the Complainant's case with substantial evidence.

Assuming *arguendo* that the Complainant established a *prima facie* case against the Company (which he did not do), the Company rebutted the Complainant's case with substantial and compelling testimony and exhibits at the evidentiary hearing. First, the Company presented the testimony of Diane Konnerth, NFG's consumer business supervisor. Ms. Konnerth presented testimony and exhibits establishing the following critical facts:

³⁰ N.T. 81.

³¹ N.T. 81.

³² *Norfolk & Western Ry. Co. v. Pa. P.U.C.*, 489 Pa. 109, 413 A.2d 1037 (1980), *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960), *Murphy v. Commonwealth, Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

- There was no significant difference in the Complainant's gas usage at the Service Location between 2016 and 2017;³³
- The Disputed Bill in May 2016 was consistent with his prior bill based on his prior gas usage at the Service Location;³⁴ and
- The Company's Service Representative who spoke with the Complainant on the May 20, 2016 call informed him to open his doors and windows, and to evacuate to a safe distance and wait for a Company representative to arrive to check for a gas leak.³⁵

The Company also presented the testimony of Tim DeSanto, a NFG assistant general foreman with 12 years of experience with the Company.³⁶ Mr. DeSanto in part discussed the Company's tariff which in part states: "[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."³⁷ He testified that the positioning of the leak at the Service Location conformed to the above description, and therefore it would be the responsibility of the Complainant to detect leaks that occur on his service line.³⁸ Mr. DeSanto also testified that the Company's tariff imposed no duty on NFG to inspect the Complainant's private service line.³⁹

Mr. DeSanto also addressed the emergency order that was generated as a result of the gas leak found on the Complainant's service line.⁴⁰ Mr. DeSanto explained a gas leak was found on the line to the customer's dryer on the valve, and it took nineteen minutes from the time the emergency order was dispatched to the time the leak was repaired.⁴¹ Finally, Mr. DeSanto

³³ N.T. 64:9-17.

³⁴ N.T. 64:18-25; 65:1-2.

³⁵ N.T. 66:15-25, NFG Exhibit 4.

³⁶ N.T. 76:19-21.

³⁷ N.T. 78:11-16-26, NFG Exhibit 6.

³⁸ N.T. 78:17-24.

³⁹ N.T. 78-79:1-3, NFG Exhibit 6.

⁴⁰ N.T. 79.

⁴¹ N.T. 80:2-14.

testified that the Company followed its typical procedures in issuing the emergency order and repairing the leak at the Service Location.⁴²

Mr. DeSanto also testified regarding the Receipt of Advice.⁴³ He explained that the Receipt of Advice was created when the Service Representative discovered the leak, and the document also advised the Complainant to have a contractor provide a permanent repair to the leak and leaking valve because the leak was on his private gas line.⁴⁴ Mr. DeSanto testified that the gas detection reading for the leak was not above one percent, and if it was above one percent, the Company would have been forced to evacuate the Service Location.⁴⁵ Mr. DeSanto further stated that the Company was under no obligation or duty to inspect the Complainant's personal gas line in his home prior to a leak being discovered.⁴⁶

The Company's evidence clearly established that it acted reasonably at all times relevant to this proceeding, including responding immediately to the Complainant's potential gas leak, and ensuring the situation was safe for the Complainant. The Company followed its policy throughout the entire process. The Company acted reasonably, respectfully and professionally when dealing with the Complainant and addressing his objections.

The Complainant failed to elicit any facts or evidence rebutting the Company's evidence clearly establishing that its conduct in this matter was reasonable and appropriate.

Therefore, the Complaint should be dismissed because the Complainant failed to carry his burden of proof establishing a *prima facie* case that the Company violated the Code or Commission regulations. Furthermore, to the extent the Complainant could be viewed to have established a *prima facie* case against the Company (which the Complainant failed to establish),

⁴² N.T. 81, NFG Exhibit 7.

⁴³ N.T. 81.

⁴⁴ N.T. 82: 1-3; NFG Exhibit 8.

⁴⁵ N.T. 82, NFG Exhibit 8.

⁴⁶ N.T. 83: 13-17.

the Company presented substantial expert testimony and evidence sufficient to rebut the Complainant's prima facie case. The Complainant never rebutted the Company's evidence at any time.

VII. PROPOSED CONCLUSIONS OF LAW

1. The Complainant carries the burden of showing that the utility is responsible or accountable for the problem described in the Complaint in order to prevail. *Patterson v. Bell Telephone Company of Pennsylvania*, Docket No. F-8966524 (Final Order Entered February 8, 1990), *Feinstein v. Philadelphia Suburban Water Company*, Docket No. 20822 (Final Order entered October 6, 1976).

2. The burden of proof must be carried by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.*, 529 A.2d 654, 602 A.2d 863 (1992). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

3. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. P.U.C.*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. P.U.C.*, 623 A.2d 6 (Pa. Cmwlth. 1993), 2 Pa.C.S. § 704. 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. P.U.C.*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

4. The offense must be a violation of the Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701; *West Penn Power Co. v Pa. P.U.C.*, 478 A.2d 947, 949 (Pa. Cmwlth. 1984).

5. The "burden of proof" is composed of two distinct burdens: the burden of production and the burden of persuasion. *Hurley v. Hurley*, 754 A.2d 1283 (Pa. Super. 2000).

6. The burden of persuasion determines which party must produce sufficient evidence to meet the applicable standard of proof. *Hurley v. Hurley*, 754 A.2d 1283 (Pa. Super. 2000).

7. The burden of persuasion never leaves the party on whom it is originally cast, but the burden of production may shift during the course of the proceedings." *Riedel v. County of Allegheny*, 633 A.2d 1325; 1328 n. 11 (Pa. Cmwlth. 1993).

8. The Complainant failed to meet his burden of proving he is entitled to relief or that the Company provided unreasonable service. 66 Pa.C.S. § 332(a).

9. Access issues constitute exigent circumstances that excuse the Company from billing based on actual meter data, consistent with 52 Pa. Code § 56.12(4).

10. By law, a public utility is entitled to receive payment for the service it provides to customers. *Scaccia v. West Penn Power Co.*, 55 Pa. PUC 637 (1982); *Kea v. Peoples Natural Gas Co.*, 60 Pa. PUC 215 (1985); *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982).

11. The Company's service representative arrived at the Service Location within five minutes of the emergency order being dispatched, and ensured the situation was safe for the Complainant within nineteen minutes of his arrival, which constitutes reasonable service.

Bennett v. UGI Central Penn Gas, Inc., Docket No. F-2013-2396611 (Final Order entered April 10, 2014).

12. A public utility cannot be held to have provided inadequate or unreasonable service because it failed to anticipate unforeseen or unusual circumstances or occurrences. *Bennett v. UGI Central Penn Gas, Inc.*, Docket No. F-2013-2396611 (Final Order entered April 10, 2014).

13. The Company has no duty to inspect a Complainant's internal service line, and the Complainant is responsible for the leaks located on the customer side of the gas meter. *Brown v. Philadelphia Gas Works*, Docket No. F-2012-2326633 (Final Order entered August 14, 2013); 66 Pa. C.S.A. § 102.

14. The Company has provided reasonable, safe, efficient and adequate service to the Complainant. 66 Pa.C.S. § 1501.

VIII. CONCLUSION

Based upon the foregoing, it is respectfully requested that the Complaint of Harry Larry Bierley be dismissed in its entirety with prejudice.

Respectfully submitted,



Kathleen A. Ryan
Alan M. Seltzer
BUCHANAN INGERSOLL & ROONEY PC
409 North Second Street, Suite 500
Harrisburg, PA 17101-1357
(717) 237-4975

Dated: July 17, 2017

Attorneys for
National Fuel Gas Distribution Corporation

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

HARRY LARRY BIERLEY

v.

**NATIONAL FUEL GAS
DISTRUBUTION CORPORATION**

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Docket No. C-2016-2553988

CERTIFICATE OF SERVICE

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

Via First Class Mail

Harry Larry Bierley
242 East 32nd Street
Erie, PA 16504

Dated this 17th day of July, 2017.



Kathleen A. Ryan, Esq.