

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Harry Larry Bierley	:	
	:	
v.	:	C-2016-2553988
	:	
National Fuel Gas	:	
Distribution Corporation	:	

**INITIAL DECISION**

Before  
Jeffrey A. Watson  
Administrative Law Judge

Harry Larry Bierley filed a formal complaint against National Fuel Gas Distribution Corporation on June 27, 2016 alleging the existence of incorrect charges on his gas bill that he received on May 20, 2016 and customer service issues related to gas provided by the Company to Complainant’s residence. Complainant requested a refund for gas billed at the time of a leak inside his residence and a payment arrangement. This decision dismisses the complaint for failure of Complainant to meet his burden of proof.

**HISTORY OF THE PROCEEDING**

On June 27, 2016, Harry Larry Bierley (Complainant or Mr. Bierley) filed a formal complaint (complaint) with the Pennsylvania Public Utility Commission (Commission) against National Fuel Gas Distribution Corporation (National Fuel, NFG or the Company) alleging he received a high gas bill at 242 East 32<sup>nd</sup> Street, Erie, Pennsylvania (service location or service address).

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, 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 Complainant.

On October 4, 2016, 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 the undersigned Presiding Officer. A Prehearing Order was also entered on March 21, 2017.

On March 23, 2017 an Interim Order was entered granting in part and denying in part the Preliminary Objections of Respondent.<sup>1</sup>

An evidentiary hearing was held in this matter on May 18, 2017. Complainant appeared *pro se* and testified in support of his claims. Complainant offered Complainant Exhibits A through C, which were admitted into evidence. Respondent was represented by Kathleen A. Ryan, Esquire. Respondent presented testimony from two witnesses and offered Respondent Exhibits one through eight which were admitted into evidence.

On May 19, 2017, an Interim Order Setting Briefing Schedule (Briefing Order) was entered.

The Company timely filed its brief on July 17, 2017. Complainant timely provided a copy of his brief to the undersigned Presiding Officer on July 18, 2017.

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<sup>1</sup> Complainant's claim for monetary damages was dismissed, however the remaining objections regarding alleged incorrect charges and service issues were denied.

A transcript of the hearing record consisting of 101 pages was received on July 19, 2017.

An interim order was entered on August 9, 2017, closing the hearing record in this proceeding.

### FINDINGS OF FACT

1. Complainant is Harry Larry Bierley, who resides at 242 East 32<sup>nd</sup> Street, Erie, Pennsylvania (service location). (N.T. 12).

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

3. Complainant has resided at the service location since January of 2016. (N.T. 19, 30; Compl. Exhibit A).

4. The service location had two smoke alarm devices installed in the home at the time Complainant moved into the home. (N.T. 32).

5. On May 20, 2016, 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; Compl. Exhibit C).

6. On May 20, 2016, Complainant called the Company to contest the disputed bill. (N.T. 25; NFG Exhibit 4).

7. Based 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. (N.T. 37; NFG Exhibit 7).

8. In light of a potential gas leak at the service location, the Company representative advised 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; NFG Exhibit 4).

9. A Company service representative (service representative) arrived at the service location less than five minutes after Complainant's phone call with the Company ended. (N.T. 37).

10. The service representative identified a gas leak on the valve of Complainant's private service line to his clothes dryer and isolated the leak within 19 minutes of his arrival at the service location. (N.T. 80; NFG Exhibit 7).

11. The service representative issued a Receipt of Advice to Complainant, confirming that Respondent advised Complainant to have a professional fully repair the service line to his clothes dryer, because the leak was on Complainant's private gas line. (N.T. 82; NFG Exhibit 8).

12. 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; NFG Exhibit 4).

13. On the call, the service representative informed Complainant that because the gas leak occurred on Complainant's private house line, Complainant was responsible for paying the disputed bill. (N.T. 67; NFG Exhibit 4).

14. The Company offered Complainant a payment arrangement for the disputed bill. (N.T. 67; NFG Exhibit 4).

## DISCUSSION

Harry Larry Bierley filed a formal complaint against National Fuel Gas Distribution Corporation alleging the existence of incorrect charges on his gas bill (disputed bill)<sup>2</sup> that he received on May 20, 2016 and customer service issues related to gas provided by the Company to Complainant's residence. Complainant requested a refund for gas billed at the time of a leak inside his residence and a payment arrangement.

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 service representative explained that because the gas leak occurred on Complainant's house line, the Company was not responsible for it. As a result, the Company informed Complainant he was responsible for paying the disputed bill.

### Burden of proof

66 Pa.C.S. § 332(a) provides that the proponent of a rule or order has the burden of proof in a Commission proceeding, except as otherwise provided in 66 Pa.C.S. § 315. "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 party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). In order to prevail in this proceeding, Complainant has the burden of showing that the Company is responsible or accountable for the problem described in the complaint. *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).

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<sup>2</sup> The Company did not provide an actual reading of 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 Complainant previously.

Complainant must establish his case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990), alloc. den., 529 A.2d 654, 602 A.2d 863 (1992).

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. *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).

If a utility does not rebut that evidence, a complainant will prevail. *Id.* If the utility rebuts a complainant's evidence, the burden of going forward with the evidence shifts back to complainant, who must rebut the utility's evidence by a preponderance of the evidence. *Id.* 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 complainant. *Id.*

Furthermore, substantial evidence in the record must support the decision of the Commission. *See, e.g.*, Section 704 of the Administrative Agency Law, 2 Pa.C.S. § 704; *Yellow Cab Company v. Pa. Pub. Util. Comm'n*, 524 A.2d 1069 (Pa.Cmwlth. 1987).

The term "substantial evidence" means such relevant evidence that a reasonable mind may accept as adequate to support a conclusion. *Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980). 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. Pub. Util. Comm'n*, 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).

In addition, 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. Pub. Util. Comm'n*, 478 A.2d 947, 949 (Pa.Cmwlth. 1984).

Accordingly, the record in this case must be reviewed to determine whether Complainant has satisfied his burden of proof, *i.e.*, whether 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 Complainant is not responsible for the disputed bill. Any finding that the Company has provided unreasonable service also must be supported by substantial record evidence.

Adequate, efficient, safe and reliable service

66 Pa.C.S. § 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.” 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 (Final Order entered April 10, 2014).

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.

*West Penn Power Co. v. Pa. Pub. Util. Comm’n*, 478 A.2d 947, 949 (Pa.Cmwlth. 1984) (footnote omitted).

Complainant supported his argument with his testimony consisting of his lay opinions and beliefs regarding what he believed the Company should have done and 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.

Both the Code and the Commission's regulations require only that a public utility provide service that is reasonably continuous and without unreasonable interruptions. In *Re Metropolitan Edison Co.*, 80 Pa. PUC 662, 672 (1993), the Commission concluded:

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.*: "Section 1501 of the Code does not translate into a duty to provide 'perfect' service." 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).

Applied here, 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. When Complainant informed the Company's service representative of the situation potentially involving 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 19 minutes of his arrival. Regarding 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), Complainant admitted during the hearing that he never requested the Company to come inspect his home before the May 20 call. Complainant admitted he had no indication there was a gas leak on his private gas line and no evidence was present to establish any reason for the Company to conduct an investigation inside the service location. Additionally, Complainant failed to

establish any authority to support his argument that the Company had a duty to inspect a customer's private house line.

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, Complainant has the burden of proof in this matter. Complainant's argument consists mainly of his allegations 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 and that he should receive a refund for the period of time that the leak existed.

Complainant also claimed that the Company should have informed him immediately when there was an increase in gas usage at the service location and should have sent emergency medical personnel to the service location in addition to the service representative.

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. 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 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. Therefore, no picture was taken of Complainant's meter and he was not notified of any increased usage by the Company.

Additionally, no evidence was presented as to why emergency medical personnel should have been sent to 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 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. *Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n*, 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.Cmwlt. 1984).

Tim DeSanto, a NFG assistant general foreman with 12 years of experience with the Company, 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."<sup>3</sup> 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 Complainant to detect leaks that occur on his service line.

Mr. DeSanto also addressed the emergency order that was generated as a result of the gas leak found on Complainant's service line. Mr. DeSanto explained a gas leak was found on the line to the customer's dryer on the valve, and it took 19 minutes from the time the emergency order was dispatched to the time the leak was repaired. Finally, Mr. DeSanto testified that the Company followed its typical procedures in issuing the emergency order and repairing the leak at the service location. Mr. DeSanto also testified regarding the Receipt of Advice. He explained that the Receipt of Advice was created when the service representative discovered the leak, and the document also advised Complainant to have a contractor provide a permanent repair to the leak and leaking valve because the leak was on his private gas line.<sup>4</sup> 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.<sup>5</sup> Mr. DeSanto further stated that the Company was under no obligation or duty to inspect Complainant's personal gas line in his home prior to a leak being discovered.

Complainant provided no evidence showing that the Company's response constituted unreasonable service or was a violation of any provision the Commission has

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<sup>3</sup> N.T. 78; NFG Exhibit 6.

<sup>4</sup> N.T. 82; NFG Exhibit 8.

<sup>5</sup> N.T. 82, NFG Exhibit 8.

jurisdiction to administer. Therefore, 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 complaint must be dismissed.

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.

Complainant alleged that he called Respondent and was told by a representative to read his meter during the telephone conversation. Complainant testified that the representative expressed alarm upon receiving the meter read and instructed Complainant to open his windows and doors and to evacuate the residence. Complainant alleged that he suffered lung pain as a result of the gas leak in his residence and that Respondent should have discovered the gas leak in his residence and notified him of the situation. Complainant further requested a refund for the gas that was billed for during the leak.

Respondent presented evidence that as a result of a telephone conversation with 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, a company representative dispatched to the service location found that the line to Complainant's clothes dryer had a gas leak and turned off the gas to the dryer. The company representative also advised Complainant in writing to have a contractor repair and check the valve on his dryer.

Complainant also failed to establish any basis for his argument that Respondent should provide him a refund for the period of time that the leak existed.

The evidence established that Respondent acted reasonably at all times relevant to this proceeding, including responding immediately to Complainant's potential gas leak, and ensuring the situation was safe for Complainant and following its policy throughout the duration of its dealings with Complainant. In addition, the Company tariff imposes no duty upon Respondent to inspect Complainant's private service line.

## CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.

2. 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).

3. The burden of proof must be carried by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 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).

4. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 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. Pub. Util. Comm'n*, 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).

5. The offense complained of 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. Pub. Util. Comm'n*, 478 A.2d 947, 949 (Pa.Cmwlth. 1984).

6. 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).

7. 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).

8. 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).

9. 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); 66 Pa.C.S. § 1501.

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. 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).

12. The Company has no duty to inspect a complainant's internal service line, and 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.

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

