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October 2, 2017

VIA E-FILING

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

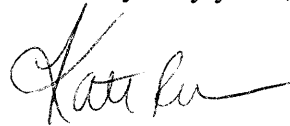
Re: Harry Larry Bierley v. National Fuel Gas Distribution Corporation;
Docket No. C-2016-2553988

Dear Secretary Chiavetta:

On behalf of National Fuel Gas Distribution Corporation, I have enclosed for electronic filing the Reply to Exceptions on behalf 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
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

HARRY LARRY BIERLEY

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:
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:
:

v.

Docket No. C-2016-2553988

**NATIONAL FUEL GAS
DISTRUBUTION CORPORATION**

**REPLY TO EXCEPTIONS
ON BEHALF OF
NATIONAL FUEL GAS DISTRIBUTION CORPORATION**

BUCHANAN INGERSOLL & ROONEY, P.C.

Kathleen A. Ryan, PA ID No. 314177
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409 North Second Street
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Harrisburg, Pennsylvania 17101-1357

**Attorneys for National Fuel Gas Distribution
Corporation**

Dated: October 2, 2017

I. INTRODUCTION

National Fuel Gas Distribution Corporation (the “Company”) respectfully requests that the Pennsylvania Public Utility Commission (“Commission”) deny the Exceptions filed by Harry Larry Bierley (“Complainant”) to the Initial Decision (“Initial Decision” or “I.D.”) entered August 14, 2017 dismissing the Complainant’s Formal Complaint (“Complaint”). The Complainant’s Exceptions must be dismissed because (i) they do not provide a legal basis to challenge any Finding of Fact or Conclusion of Law reached in the Initial Decision or provide any reason to reverse the Initial Decision; and (ii) they contain inappropriate extra-record factual allegations and opinions that cannot be considered at this stage of the proceeding.

On June 26, 2016, the Complainant filed the Complaint against the Company averring issues with his bills and requesting a payment agreement.

The Complaint was served upon the Company on July 1, 2016.

On July 20, 2016, the Company filed an Answer admitting in part and denying in part the material allegations of the Complaint, as well as 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 Complainant’s Reply.

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

An Interim Order was issued on March 23, 2017, Granting in Part and Denying in Part the Preliminary Objections of NFG.

An Initial Telephonic Hearing was scheduled for April 24, 2017 but was postponed when the Complainant's request for a continuance was granted.

An evidentiary hearing was scheduled on May 18, 2017. That day, the Complainant appeared *pro se* and provided verbal testimony and sponsored three exhibits. The Company presented testimony of two witnesses and sponsored eight exhibits.

The record closed on August 9, 2017.¹

The Initial Decision dismissing the Complaint was issued by the presiding Administrative Law Judge ("ALJ") on August 31, 2017. The Initial Decision concluded that the Complainant failed to carry his burden of proof on his allegation that the Company violated the Public Utility Code, 66 Pa.C.S. sec. 101, *et. seq* ("Code"), Commission regulation or order, or was otherwise responsible for incorrect charges on his gas bill and the customer service issues raised in the Complaint.²

On September 20, 2017, the Complainant filed a document titled "Exceptions to Order."

In response, the Company submits the following Replies to the Exceptions.

II. REPLIES TO EXCEPTIONS

The Complainant's Exceptions are flawed and should be denied. First, the Exceptions are simply statements as to what the Complainant believes the law *should* be, and contain no analysis of any alleged legal or other errors in the Initial Decision warranting reversal by the Commission. Second, the Exceptions improperly attempt to assert extra-record factual allegations and opinions. For these reasons, the Exceptions should be denied in their entirety.

The Complainant's Exceptions do not challenge the Initial Decision or even claim that is inconsistent with the Code. Indeed, the Initial Decision correctly found that (i) a public utility

¹ I.D. p. 3.

² I.D. pp. 8, 9; Conclusions of Law Nos. 9, 12, 13.

does not provide inadequate or unreasonable service merely because it failed to anticipate unforeseen or unusual circumstances;³ (ii) the Company 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;⁴ and (iii) at all times relating to the Complaint, the Company provided reasonable, safe, efficient and adequate service to the Complainant.⁵

Because the Complainant does not provide any legal or other basis to challenge these findings in his Exceptions, they must be denied.

Moreover, the Complainant's Exceptions contain inappropriate attempts to introduce additional extra-record facts and opinions into this proceeding. Since the evidentiary hearing occurred on May 18, 2017 and the record closed on August 9, 2017, it is not permissible to introduce into the record any additional facts regarding this matter.⁶

The Initial Decision properly addressed and disposed of the issues raised by the Complainant in this proceeding based on the substantial facts of record, and there is no lawful basis to consider any other information offered after the close of the record on August 9, 2017.⁷

³ Conclusion of Law No. 11; *Bennett v. UGI Central Penn Gas, Inc.*, Docket No. F-2013-2396611 (Final Order entered April 10, 2014).

⁴ Conclusion of Law No. 12; *Brown v. Philadelphia Gas Works*, Docket No. F-2012-2326633 (Final Order entered August 14, 2013); 66 Pa.C.S.A. § 102.

⁵ Conclusion of Law No. 13; 66 Pa.C.S. § 1501.

⁶ See *Huh v. PECO Energy Company*, Docket No. F-2013-2386249 (Final Order entered January 15, 2015 denying complainant's exceptions and refusing to consider extra-record information offered by the complainant in exceptions); *Ditsious v. Pennsylvania Electric Company*, Docket Nos. F-2011-2274306, F-2011-2274313, F-2011-2274318, F-2011-2274319 (Final Order entered March 14, 2013 denying admission of extra-record information offered by complainant in exceptions); *Hodak v. Pennsylvania Electric Company*, Docket No. C-2011-2274277 (Final Order entered January 24, 2013 denying admission of extra-record information offered by complainants in exceptions).

⁷ See *Application of Samir Ouaqerrouch*, Docket No. A-2011-2218369 (Order entered September 27, 2012); *Yellow Cab Company v. Pa. Pub. Util. Comm'n*, 524 A.2d 1069 (Pa. Cmwlth 1987).

III. CONCLUSION

For the reasons set forth above, the Company respectfully requests that the Commission (i) reject the Exceptions and (ii) affirm the August 31, 2017 Initial Decision in this proceeding.

Respectfully submitted,



Date: October 2, 2017

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Attorneys for
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v.	:	Docket No. C-2016-2553988
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NATIONAL FUEL GAS	:	
DISTRUBUTION CORPORATION	:	

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

Hon. Jeffrey A. Watson
Office of Administrative Law Judge
Pennsylvania Public Utility Commission
Piatt Place, Suite 220
301 5th Avenue
Pittsburgh, PA 15222

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

Dated this 2nd day of October, 2017.



Kathleen A. Ryan, Esq.