

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on August 29, 2001

COMMISSIONERS PRESENT:

Maureen O. Helmer, Chairman
Thomas J. Dunleavy
James D. Bennett
Leonard A. Weiss
Neal N. Galvin

CASE 01-G-1223 - Proceeding on Motion of the Commission
Investigating the Death of a National Fuel Gas
Distribution Corporation Customer During the
Winter of 2000-2001 and Whether National Fuel
Gas Distribution Corporation Violated the Public
Service Law and the Home Energy Fair Practices
Act.

ORDER TO SHOW CAUSE

(Issued and Effective September 20, 2001)

BY THE COMMISSION:

INTRODUCTION

Department of Public Service Staff investigated the
February, 2001 death from hypothermia of a customer in National
Fuel Gas Distribution Corporation's (NFG, National Fuel or the
company) service territory. As a result of that investigation,
it appears the company may have violated certain provisions of
the Public Service Law, including rules adopted pursuant to the
Home Energy Fair Practices Act (HEFPA) and that these violations
directly contributed to the death of this customer. Therefore,
National Fuel is directed to show cause within 30 days from the
date of this order why a penalty action should not be commenced

against it for violations of the Public Service Law and the Home Energy Fair Practices Act (HEFPA).

BACKGROUND

In its investigation, staff learned that on February 20, 2001, a 58-year-old woman, Velma Fordham, was found in the rear, unheated apartment at 227 Burgard Place in the City of Buffalo. Authorities determined that Ms. Fordham had been dead approximately three weeks. An autopsy showed that the cause of death was hypothermia. At the time of her death, Ms. Fordham had a pending application for gas heating service with National Fuel.

NFG records show that on November 16, 2000, Ms. Fordham telephoned National Fuel and requested that service be terminated at her present address (66 Girard Place) and that service be initiated at a new location, 227 Burgard Place. The conversation between Ms. Fordham and the National Fuel customer service representative resulted in an arrangement by which the company would shut off service at 66 Girard on November 20, 2000 and turn on service at 227 Burgard on November 21, 2000.

Service was terminated at the Girard address early in the day on November 20, 2000. During the late afternoon, however, a major snowstorm hit the Buffalo area. Because of the severity of the storm, the Mayor of Buffalo and Governor Pataki declared a state of emergency. Presumably due to the weather, NFG did not complete the order to turn on Ms. Fordham's service at 227 Burgard on November 21, 2000 as she expected.

On November 22, 2000, Ms. Fordham again called National Fuel to ask when service would be turned on at 227 Burgard. NFG told the customer that the company would be out that day to turn on service and it was agreed that National Fuel would call the landlord in advance to arrange access. On this same day, the landlord also telephoned National Fuel to ask

about having the gas turned on. The NFG representative told him that the service order to turn on service would be worked that day and that the order already noted to call the landlord in advance. Despite Ms. Fordham's and the landlord's calls, National Fuel did not initiate service at 227 Burgard on November 22, 2000.

In fact, NFG had still not turned on service by November 29, 2000, at which time Ms. Fordham visited National Fuel's Customer Assistance Center and filled out a second application for service. When the representative who took the application entered the order into the system, it produced a record of an outstanding debt of \$2,100 for which NFG had obtained a court judgment. As a result, the representative issued a denial of service notification. During Staff's investigation, NFG employees informed Department of Public Service Staff that it is NFG's company policy not to enter into deferred payment agreements with customers against whom a court has issued a judgment for unpaid bills.

When Ms. Fordham left National Fuel's Customer Assistance Center on November 29, 2000, she visited the Erie County Office of Temporary and Disability Assistance. According to company records, Ms. Fordham qualified for two payments (emergency and basic) under the Home Energy Assistance Program (HEAP) totaling \$710. She then returned to National Fuel with the HEAP authorization, but the NFG representative still denied her service.

On December 14, 2000, a serviceman visited 227 Burgard with an order to turn on service. His visit precipitated from the company's failure to meet its original November 21, 2000 service connection date. The serviceman was unable to gain access. By form letter dated December 19, 2000, National Fuel notified Ms. Fordham of the December 14, 2000 attempt to turn on

service and advised her to call the company to set up an appointment to initiate service. This letter was recovered by police during their investigation. NFG provided no record of Ms. Fordham further contacting the company.

DISCUSSION

Residential customers of gas, electric and steam utility companies in New York State have the benefit of comprehensive protections under the provisions of the Home Energy Fair Practices Act (HEFPA).¹ In this case, National Fuel may have violated at least three sections of HEFPA regulations dealing with initiating service and offering deferred payment agreements and one provision of HEFPA itself.

For instance, Public Service Law Section 31(3) requires that when a residential customer moves to a new residence within the service territory of the same utility corporation, the customer shall be eligible for service at the new address and that such service shall be considered a continuation of service "in all respects." In denying service to Velma Fordham when she applied on November 29, 2000, National Fuel arguably violated PSL §31(3). Ms. Fordham remained eligible for service under HEFPA until her death on February 20, 2001. It was not until NFG's December 14, 2000 visit that the company made any attempt to turn on Ms. Fordham's service.

Section 11.3(a)(4) of 16 NYCRR obligates a utility to provide service within five days of receipt of an oral or written application for service. As noted above, Ms. Fordham contacted National Fuel on November 16, 2000 and arranged for service to be turned on by November 21, 2000. However, NFG never provided service to Ms. Fordham, even though the company

¹ The HEFPA rules can be found at 16 NYCRR Part 11.

generated daily reports of outstanding service orders that should have alerted it to her need for service and the fact that her service had never been initiated. National Fuel was obligated to initiate service within five business days of November 21, 2000, up until February 20, 2001, when Ms. Fordham was found. NFG's failure to act appears to have violated 16 NYCRR section 11.3(a)(4). NFG is ordered to show cause why it failed to provide service to Ms. Fordham within 5 business days of November 21, 2000.

HEFPA rules (16 NYCRR) section 11.10(a) and 11.10(b) obligates utilities to make reasonable efforts to contact customers to negotiate "in good faith" a deferred payment agreement and outlines the eligibility requirements for being offered a deferred payment agreement. NFG never contacted Ms. Fordham to negotiate a deferred payment agreement.² From the date Ms. Fordham visited the company's Customer Assistance Center on November 29, 2000, until her death, NFG never offered her a deferred payment agreement; an apparent violation of Section 11.10(a) and (b). NFG is ordered to show cause why Ms. Fordham was not offered a deferred payment agreement from November 21, 2000 until she was discovered on February 20, 2001.

Moreover, NFG's policy not to enter into deferred payment agreements with customers against whom a court has issued a judgment for unpaid bills directly conflicts with the HEFPA rules. The Commission therefore orders NFG to explain this policy and to show why a penalty should not be brought against it for the policy.

² Generally, the only conditions under which a customer is not eligible for a deferred payment agreement are if the customer has broken an agreement or the customer has the financial resources to pay the bill. 16 NYCRR § 11.10(b). Neither of these conditions appear to have applied to Ms. Fordham.

Finally, HEFPA contains a built-in penalty clause requiring that any utility that fails to initiate service within five days, "the time required by" 16 NYCRR section 11.3, shall pay to each service applicant \$25 per day for each day service is not supplied. 16 NYCRR 11.3(c). Since (1) NFG went far beyond the required five day period for turning on service in this case; and (2) NFG has an internal policy of denying service to all customers, including HEAP-eligible customers, who have an outstanding judgment against them, the Commission orders NFG to show cause why NFG should not be ordered to review its records of the past six years, contact and pay section 11.3(c) penalties to 1) customers who did not receive service within the allotted time period after a service application was accepted, and 2) customers, including HEAP-eligible customers, who did not receive service within five business days because an application for service was improperly denied as a result of NFG's internal policy requiring full payment of outstanding judgment.

CONCLUSION

Public Service Law section 25 authorizes the Commission to seek a penalty of \$250,000 per offense or \$100,000 per day for a continuing offense (whichever is more), when a utility violates the statute or a rule of the Public Service Commission 1) that was created for the protection of human safety, and 2) where such violation is a contributing factor in a death.³

³ Public Service Law Sections 25(2) and 25(3).

The Commission orders:

1. A proceeding is instituted and National Fuel Gas Distribution Corporation (NFG or National Fuel) is directed to shall show cause within 30 days from the date of this order why a penalty action should not be brought against the company for the following violations:

a. Continuing to deny service to Velma Fordham, even though she remained eligible for such service under Public Service Law section 31(3), from November 29, 2000 until NFG made an attempt to turn on Ms. Fordham's service on December 14, 2000; potentially a \$1.4 million penalty;

b. Failing to initiate service to Velma Fordham for 87 days beyond the prescribed time period provided for in 16 NYCRR Section 11.3(a)(4); potentially an \$8.7 million penalty;

c. Failing for 84 days (from November 29, 2000 until February 20, 2001) to make any reasonable efforts to contact Velma Fordham to offer her a deferred payment agreement, in violation of 16 NYCRR Section 11.10(a); potentially an \$8.4 million penalty;

d. Enforcing an internal policy of denying service to customers with an outstanding judgment when the customer is otherwise eligible for HEAP or other assistance or is otherwise able to make payment on current bills in contravention of HEFPA; potentially a penalty of at least \$250,000.

2. National Fuel is ordered to show cause, within 30 days from the date of this order, why it should not review all of its records of the past six years, contact and pay section 11.3(c) penalties to (1) customers who did not receive service within the allotted time period after a service application was accepted and (2) customers, including HEAP-eligible customers, who did not receive service within five business days because an

application for service was improperly denied as a result of NFG's internal policy requiring full payment of outstanding judgment.

2. This proceeding is continued.

By the Commission,

(SIGNED)

JANET HAND DEIXLER
Secretary