



# **Cooking With<sup>OUT</sup> Gas**

How Unresponsive Utility Companies Hurt a  
Vital Sector of NYC's Small Businesses



**New York State Senator Brad Hoylman**  
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## **Introduction**

In May 2017, I released a report entitled *Bleaker on Bleecker: A Snapshot of High-Rent Blight in Greenwich Village and Chelsea*. The report examined widespread “mom and pop” store vacancies, otherwise known as “high rent blight,” where rising rents force out longtime businesses, only for the space to remain vacant for months or years. While developing the report, we learned that for some small businesses, however, the problem doesn’t end with making the rent. Numerous independent business owners reported to us the challenges they faced with their utility companies. Small businesses – particularly restaurants – in the Senate district I represent frequently contact my office about their difficulty in obtaining gas service from utility companies, describing the process as confusing, arduous, and occasionally fruitless. New business owners, in particular, often struggle to understand the complex process required to get their gas turned on.

This problem is particularly concerning for the restaurant industry. New York City is home to more than 24,000 eating and drinking establishments,<sup>1</sup> employing over 315,000 people across the city<sup>2</sup>. Running a restaurant in New York City is an extraordinary and challenging undertaking under the best of circumstances.<sup>3</sup> Even businesses able to navigate the usual minefield of high rents and taxes, numerous regulations and thin profit margins frequently have their success stymied by slow and unresponsive utility companies. Hundreds of restaurants, caught in protracted disputes and delays with utility companies, struggle to function and survive on a day-to-day basis.

In response to these complaints and concerns, the New York City Hospitality Alliance and I conducted a survey of restaurant operators on the level of satisfaction with their gas service. The survey posed questions on the nature of utility service delays and their impact on restaurant operations and profits. The results reveal a dramatic snapshot of the difficulties small businesses face in dealing with utility companies.<sup>4</sup>

Our survey showed that the majority of respondents reported wait times for gas service of at least 30 days, with an average wait time of around 68 days. One respondent waited for gas service for over a year. The costs of these delays total more than \$2 million, an average of \$140,000 per respondent. This represents a significant financial impact for restaurant operators, who must continue to pay rent and taxes and make payroll, all without cooking gas, which usually means ceasing normal kitchen operations.

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<sup>1</sup> Source: N.Y.C. Dept. of Health.

<sup>2</sup> Source: U.S. Bureau of Labor Statistics (July 2017). Retrieved from: <https://fred.stlouisfed.org/graph/?g=ebSa#0>.

<sup>3</sup> Stabiner, Karen. Is New York Too Expensive for Restaurateurs? We Do the Math. October 25, 2016. Retrieved from: <https://www.nytimes.com/2016/10/26/dining/restaurant-economics-new-york.html>

<sup>4</sup> See Appendix for a copy of the survey.

## **Some Examples**

In 2014, The Clam, a seafood restaurant on Hudson Street in Greenwich Village, operated without gas for four months after Con Ed shut down its gas line shortly before the restaurant opened. Con Ed said the building's gas system could not sustain the amount of use from owner Mike Price's kitchen, even though Price reported that he "removed twice as much equipment from the previous tenant as he put back in for his restaurant."<sup>5</sup> Price was forced to use electric appliances until Con Ed turned the gas back on.

Price is not the only restaurant owner who had to use electric appliances out of desperation. After months without gas, Jason Li, the owner of Chop Shop II in Chelsea on West 24<sup>th</sup> Street, bought electric burners and hot plates and created a mostly cold menu in order to open in 2015. Li said Con Ed officials first informed him they would send someone in two weeks, but when two weeks came and went, Li was told, ambiguously, "Oh, we're going to be looking into it."<sup>6</sup> Eventually Li could not afford to wait any longer, recalling, "You know we're losing money every day, the rent's like \$20,000 a month and we had to do something. We were ready like two, three months ago."<sup>7</sup>

Not all restaurants are lucky enough to recover from operating without gas. Moscow 57 on Delancey Street on the Lower East Side was forced to operate for more than seven months without gas service after opening in early 2014. The owners blame Con Ed and the resulting financial losses caused by the service delay for their restaurant closing in November 2015. "If not for Con Ed [cutting off our gas], we'd be here for another 100 years,"<sup>8</sup> said Ellen Kaye, one of the owners of the restaurant.

More recently, Bespoke Kitchen on Hudson Street in Greenwich Village met a similar fate after being in operation fewer than two years. After renting his storefront and spending thousands of dollars on marketing in preparation for opening, owner Nicolas Bustamente learned that construction on the building meant there would be no gas for several months. He changed his menu and operated on electric, resulting in high electric costs. It took nearly a year before he was able to get Con Ed to turn on the gas. Then, a series of construction mishaps in the residential part of the building forced the gas off several more times, and each time Bustamente went through a lengthy and costly process of working with Con Ed to inspect and restore gas service. He noted Con Ed was slow to respond to

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<sup>5</sup> Squires, Kathleen. Going Electric: When Chefs Are Forced to Cook Without Gas - and Why Some Ditch the Utility for Good. September 2, 2015 Retrieved from:

<http://www.grubstreet.com/2015/09/restaurants-open-without-gas.html>

<sup>6</sup> Goldensohn, Rosa. Con Ed Work Delays Slowing Down New Restaurants From Opening. July 8, 2015. Retrieved from: <https://www.dnainfo.com/new-york/20150708/flatiron/con-ed-work-delays-slowing-down-new-restaurants-from-opening>

<sup>7</sup>Id.

<sup>8</sup> Litvak, Ed. Moscow 57/Kapowski's Closes on Delancey Street; Partners Focus on New Projects. November 24, 2015. Retrieved from: <http://www.thelodownny.com/leslog/2015/11/moscow-57kapowskis-closes-on-delancey-street-partners-focus-on-new-projects.html>

him, and the estimated timelines Con Ed would share with him didn't account for "the weather, the people, and the equipment," each item adding more time to the process. At one point he closed the restaurant for three months, before finally deciding to close for good in June 2017 after falling behind on his rent. Bustamante described the experience as "a nightmare," and noted "I felt like I was forced to leave."<sup>9</sup>

Darren Lawless, owner of Il Bambino in Greenwich Village, was surprised when Con Ed told him he was required to pay them a \$4,950 deposit for a "swingover" procedure to hook up his new restaurant's gas to the building's existing gas line without disturbing residential tenants. Lawless paid the deposit, but what ensued was a prolonged conflict characterized by poor communication and repeated missteps by Con Ed that left the new restaurant without gas and unable to open for four months. Con Ed finally restored gas without the prescribed swingover in April 2016, rendering the swingover and the deposit completely unnecessary. Months later, Lawless received a confusing letter stating Con Ed would soon complete the swingover, and another notice that his request for service had expired. As of this writing, Con Ed still has not reimbursed Lawless his \$4,950 deposit for work that was never performed.<sup>10</sup>



*Pictured: Il Bamino restaurant in Greenwich Village. The owner has been waiting for nearly a year for the return of a \$4,950 deposit for work that was never performed.*

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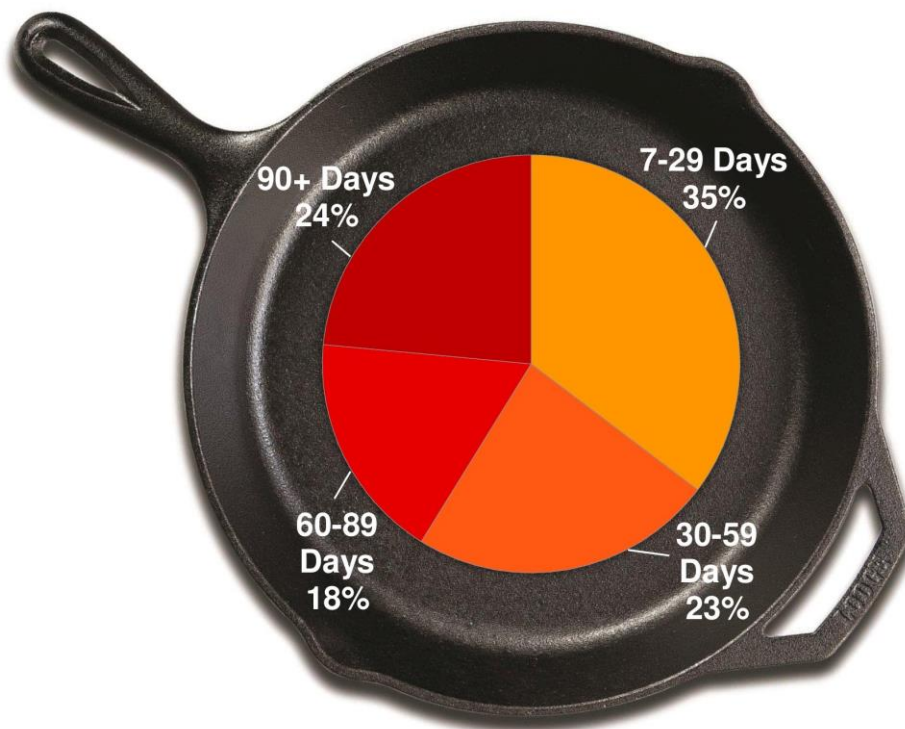
<sup>9</sup> Conversation with Nicolas Bustamante, August 10, 2017

<sup>10</sup> Conversation with Darren Lawless, September 22, 2017

## **Lengthy Delays**

Our survey of restaurants requested operators report their experiences working with utility companies. The results showed most restaurants suffered lengthy delays in getting gas service. An overwhelming majority (82.1%) of respondents experienced at least some delay in getting their gas service turned on, upgraded or adjusted by their utility company<sup>11</sup>. Only 17% of businesses reported receiving service in a timely fashion. Of the respondents who revealed the length of the service delays they experienced, 69% reported waiting at least 30 days for service, with several reporting delays of several months and one who had waited almost a year – and was still waiting at the time of the survey.

### **Length of Delay in Getting Gas Service**



One out of four respondents reported multiple delays at the same business location, and virtually all (94%) respondents who had experienced a delay reported that it caused an interruption in their business – forcing owners to push back restaurant openings, cancel special events and make difficult staffing decisions. By making restaurants routinely wait more than a month for necessary gas services, utility companies are causing significant financial losses for these businesses, which are a driving force in the New York City economy.

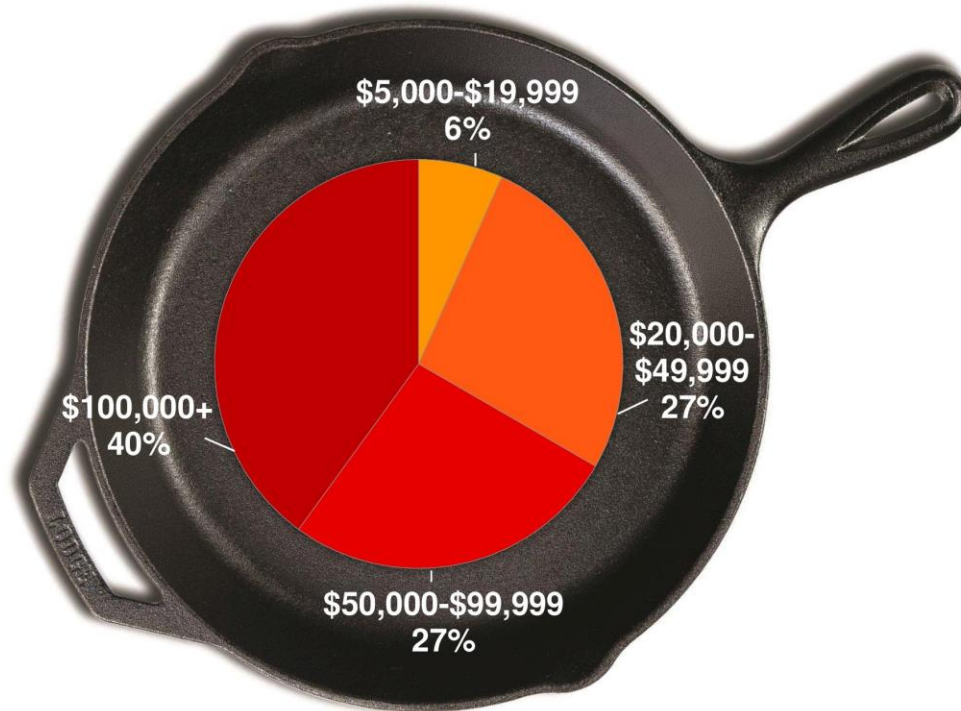
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<sup>11</sup>NYC Hospitality Alliance Survey

## **Big Financial Impact**

We asked restaurant owners to estimate the financial impact that gas service delays had on their businesses. The survey showed almost \$2.2 million lost due to delays in service -- an average of over \$140,000 per business.

### **Estimated Financial Impact Due to Gas Service**



Eighty-one percent of respondents reported that the delay in service resulted in either a reduction in employee hours and/or layoffs. One owner noted, "We were not able to offer hours to our employees when we were supposed to be opening as a result."<sup>12</sup> Another respondent wrote in the survey that the amount of money spent on electricity rather than gas is about what one additional employee would have cost the restaurant for a year.

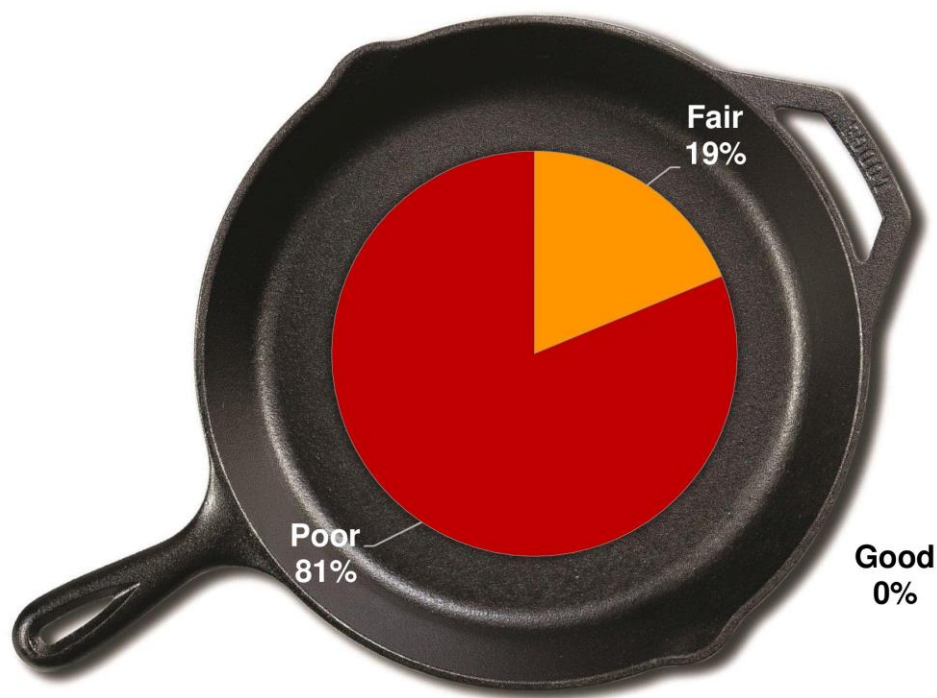
## **Poor Customer Service**

Respondents thought their gas utility's customer service was lacking, which is not surprising given the numerous delays and corresponding financial hardship. Not a single respondent gave their gas company a "Good" rating, while only 19% rated their customer service experience "Fair," and a vast majority (81%) rated it "Poor."

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<sup>12</sup>Id.

## How Would You Rate Your Utility's Customer Service?



Multiple respondents cited the need for better communication between utility companies and their customers, as the lack of communication left operators in the dark as to the status of their utility services. One restaurant operator said that it was a “very confusing process with no clarity or anyone to help guide the situation,” while another specifically cited Con Ed as being “difficult to get in touch with...even when you have their attention it can be difficult to get them to come out and do work.”

### **Problems**

Our survey identified three major problems:

- **Delays**, often up to a year or longer, of the installation, repair or restoration of gas service, leave restaurants otherwise ready to open floundering to find a backup plan, sometimes resorting to electric burners or hot plates and functioning well below full capacity.
- These onerous delays lead directly to **monetary losses**. Just among the establishments captured by our survey, we saw over \$2 million in losses for restaurants burdened by utility delays. These losses can result in **staff cuts** and **closures**.

- At the same time, the **lines of communication** between utility companies and their customers is woefully inadequate. Restaurant owners are given ambiguous or false timelines for utility work, and it is often impossible to reach utility company representatives to discuss issues and come to reasonable solutions.

It is conceivable that some problems, including delays for gas service, are the result of new safety measures taken by utility companies in the wake of several deadly gas explosions in New York City, including one in the East Village in my Senate district on March 26, 2015. However, these tragic explosions have occurred in the city for decades,<sup>13</sup> and we found no connection between safety precautions and the problems cited in this report.

## **Policy Recommendations**

The following recommendations are proposed to address these three problems with the goals of improving utility service, mitigating financial losses by small business and enhancing communication between businesses and utility companies:

### **1. The Public Service Commission Should Conduct an Investigation**

The Public Service Commission (“PSC”) should investigate the issue of utility service delays for small businesses and hold a public hearing to hear from restaurant operators. New York Public Service Law gives the PSC wide latitude to regulate gas utilities in New York State. The PSC has the statutory power to investigate both the quality of gas supplied and the methods employed by persons, corporations and municipalities in manufacturing, distributing and supplying gas. Following such an examination and public hearing, the PSC may “order such reasonable improvements as will best promote the public interest, preserve the public health,” and “render adequate service to customers.”<sup>14</sup>

Restaurant operators themselves could trigger this investigation. Existing law requires the PSC to investigate written complaints from the public concerning the practices and methods of gas corporations, as long as the complaint is signed by at least 25 consumers or purchasers of gas, or by a municipal or county official.<sup>15</sup> The PSC may inspect “the works, system, plant, devices, appliances and methods,” and may examine “the books and papers,” used by a person or corporation pertaining to the manufacture, sale, or supply of gas and may order improvements in the manufacture, conveying, transportation, distribution or supply of gas it considers “adequate, just and reasonable.”<sup>16</sup>

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<sup>13</sup> Dunlap, David W. Gas Explosions that Have Rocked New York City. October 4, 2015. Retrieved from: <https://www.nytimes.com/interactive/2015/10/04/nyregion/gas-explosions-new-york.html>

<sup>14</sup> N.Y.S. Pub. Serv. L. § 66.2.

<sup>15</sup> N.Y.S. Pub. Serv. L. § 71.

<sup>16</sup> N.Y.S. Pub. Serv. L. § 72.



## **2. Utilities Need to Improve Customer Service**

Utility companies must act on their own initiative to improve service delivery and communication with customers, particularly in the restaurant industry. For example, utility companies could create an office for a Small Business Liaison, to provide specialized assistance to address the unique needs of small businesses, particularly those in the restaurant industry. One restaurant owner suggested having a dedicated customer case representative who can guide customers through the process when working with the utility company, which could help smooth out the process of obtaining service.<sup>17</sup> Utilities could also establish a policy that allows customers to easily report non-outage-related problems.

## **3. Albany Should Pass a Small Business Utility Customer “Bill of Rights”**

I am proposing legislation that would create a “Bill of Rights” for small business utility customers, partially modeled after New York’s “Home Energy Fair Practices Act” for residential utility customers. Such legislation will include setting statutory timeframes for addressing customers’ issues, requiring prompt investigations of consumer complaints, and providing a civil remedy for losses incurred due to unreasonable delays by utility companies.

## **Acknowledgments**

Thank you to the **New York City Hospitality Alliance** for their help in creating and distributing the survey we used for this report. Special thanks to **Burton Phillips, Brittany Honeyman, Kyle Wehner, Tara Klein, Rebecca Kriegman, and Noah Gardy** for their assistance with the preparation of this report.

Cover photo: “out of the frying pan” by Flickr user **waferboard**. Photo licensed for use under CC BY 2.0.

Photo on page 4: Google Maps Street View

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<sup>17</sup> NYC Hospitality Alliance Survey.

## **Appendix: Methodology & Survey Results**

The following survey questions were distributed to members of the New York City Hospitality Alliance in April 2017. Twenty-eight responses were received.

1. Has your business experienced a delay in getting your gas service turned on, upgraded or adjusted by your utility company?
  - Yes: 23 (82.1%)
  - No: 5 (17.9%)
  
2. If yes, approximately how long was the delay?
  - 28 days
  - 30 days
  - 3 months
  - 60 days
  - About 1 year and still waiting for service
  - 35 days
  - 30-45 days
  - 6 months
  - 7 days
  - Over 20 days
  - 21 days or more
  - 2 weeks
  - 3 months
  - 60 days so far
  - 32 days
  - 21 days
  - 60 days
  
3. Has this occurred more than once at this business location?
  - Yes: 4 (25%)
  - No: 12 (75%)
  
4. Did the delay result in an interruption to your business?
  - Yes: 15 (94%)
  - No: 1 (6%)

5. What was the estimated financial impact on your business because of the delay?

- \$100,000
- \$60,000
- \$100,000
- \$30,000
- Approximately \$20,000-\$25,000
- \$65,000 in hard costs and \$250,000 in sales
- \$50,000
- \$300,000
- \$20,000
- \$945,000
- \$5,000
- \$40,000
- \$50,000
- \$100,000

6. Did the delay result in a reduction of employee hours and/or layoffs?

- Yes: 13 (81%)
- No: 3 (19%)

7. How would you rate your utility's customer service?

- Good: 0 (0%)
- Fair: 3 (19%)
- Poor: 13 (81%)

8. Do you have suggestions to improve the process for gas service being turned on, upgraded or adjusted? *Note: suggestions from business owners have been incorporated into the policy recommendations found in this report.*

9. Did a government agency and/or another party involved play a role in delaying your gas service from being turned on, upgraded or adjusted?

- Yes: 6 (37%)
- No: 10 (63%)

10. Is your business serviced by Con Ed or National Grid?

- Con Ed: 16 (84%)
- National Grid: 3 (16%)