**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kevin Washington :

 :

v. : C-2013-2388427

:

Philadelphia Gas Works :

**INITIAL DECISION**

Before

Angela T. Jones

Administrative Law Judge

INTRODUCTION

In this case, Kevin Washington (Complainant) filed a formal complaint (Complaint) with the Pennsylvania Public Utility Commission (PUC or Commission) which requested restoration of gas service at 1377 Farrington Road, Philadelphia, Pennsylvania (service address). Complainant also requested that Philadelphia Gas Works (PGW or Company or Respondent) be held responsible and accountable for its operational errors.

The Complainant did sustain his burden of proof regarding his allegations of operational errors by Respondent. Complainant did not sustain his burden of proof regarding restoration of gas service and reinstating a Company-issued payment arrangement. Accordingly, the undersigned granted the Complainant’s Complaint in part and denied Complainant’s Complaint in part.

history of the proceeding

On October 15, 2013, Complainant filed a Complaint against PGW with the Commission. Complainant alleged that he was not told to call the Company back after he paid $700.00 as a down payment for a payment agreement. Complainant received gas service at 1377 Farrington Road, Philadelphia, Pennsylvania (service address). Complainant requested that his gas service be restored and that the Company reinstate his payment plan.

On November 6, 2013, Respondent filed an Answer addressing the material allegations of the Complaint. PGW admitted that it issued a notice to shut off gas service at the service address on July 15, 2013, to be performed on or up to 60 days after July 29, 2013. PGW admitted that a payment of $700.00 was posted to the Complainant’s account on July 26, 2013. PGW admitted that Complainant’s gas service was terminated on August 14, 2013.

PGW admitted that the Complainant was at the Company’s service center on August 15, 2013, to determine eligibility to participate in the Company’s Customer Responsibility Program (CRP) for restoration of gas service. Complainant provided income and household information. It was determined based on the information provided by the Complainant that he was not eligible for CRP.

PGW stated that Complainant had 27 broken payment agreements on his account. Respondent stated that it required the full account balance of $2,588.94, plus $123.23 reconnection fee,[[1]](#footnote-1) plus half of the security deposit or $117.00[[2]](#footnote-2) for the first month or a total of ($2,588.94 + $123.23 + $117.00 = $2,829.17) $2,829.17 to restore service.

By decision dated September 5, 2013, the Commission’s Bureau of Consumer Services (BCS) found that the Complainant had to pay $2,826.14 for service to be restored.

Respondent requested that the Commission find against the Complainant and dismiss the Complaint.

By letter dated November 14, 2013, Respondent stated that the Complaint was satisfied pursuant to 52 Pa.Code § 5.24(b). The Respondent stated there is no further Commission action necessary for this Complaint.

By letter dated January 8, 2014, Complainant stated he never received anything in writing to sign off on his Complaint. Complainant stated he has been without gas service since July 2013, and requested that the Commission reopen his case and schedule a hearing expeditiously.

By Secretarial letter dated January 14, 2014, the Secretary to the Commission noted that there was a certificate of satisfaction (cs) filed with the Commission regarding this Complaint. The Secretary also noted that the Complainant did not file an objection to the cs within 10 days. However, the cs indicated that a copy was sent to “Kevin Young” rather than the Complainant, Kevin Washington. The Secretary found that the Complainant never had an opportunity to object to the filing of the cs because of the error in service of the certificate. Consequently, because of error in service by the Respondent, the Secretary granted the Complainant’s request to reopen the Complaint.

A Hearing Notice dated January 31, 2014, informed the parties that the initial hearing in this matter was scheduled for Thursday, March 13, 2014, at 10:00 a.m.

A Prehearing Order was issued on February 4, 2014, advising the parties of the date and time of the scheduled hearing, and informing them of the procedures applicable to this proceeding. The Prehearing Order directed the Respondent be prepared to show that notice was sent to the Complainant in writing prior to the gas termination after the Complainant complied with the $700.00 payment.

The initial hearing convened as scheduled. Kevin Washington appeared pro se representing himself. The Complainant sponsored two exhibits—a PGW 10 day shut-off notice, and a PGW receipt for payment of $700.00. The two exhibits were admitted without objection.

The Respondent was represented by Graciela Christlieb, Esquire, who was accompanied by one witness, Linda Pereira. Respondent sponsored the following seven exhibits:

1. PGW Exhibit 1 – History of customer contacts;
2. PGW Exhibit 2 – Settlement Letter;
3. PGW Exhibit 3 – History of payment arrangements;
4. PGW Exhibit 4 (amended) – History of credit and collections;[[3]](#footnote-3)
5. PGW Exhibit 5 – Financial account;
6. PGW Exhibit 6 – History of BCS complaints from 2009 to 2013; and
7. PGW Exhibit 7 – PGW bills from November 2012 to October 2013.

 All seven PGW exhibits were admitted into the record.

The evidentiary hearing produced 143 pages of transcribed testimony. The record closed on April 14, 2014.

FINDINGS OF FACT

1. The Complainant is Kevin Washington who currently resides at 1377 Farrington Road, Philadelphia, Pennsylvania (service address). Complainant receives gas service from PGW at the service address in his name. Tr. 6.
2. Complainant’s gas service was terminated on August 14, 2013. Complainant’s gas service was terminated because he failed to call PGW to enter into a payment arrangement. Tr. 6, 126-27, PGW Exhibits 1, 5.
3. Complainant had a payment arrangement when the gas service was terminated. Complainant received a 10-day shut-off notice and had to follow the notice to call Respondent to continue with the payment arrangement. Complainant understood that he had to pay $700.00 to continue with the payment arrangement and avoid termination of gas service. Complainant paid the $700.00 to Respondent. Tr. 6-10, Complainant Exhibits 1, 2.
4. Complainant was told when he contacted PGW after his gas services were terminated that because he did not contact PGW to reinstate the payment arrangement, his gas services were terminated. Tr. 12.
5. Complainant was not told that he had to call PGW back after making the $700.00 payment to make another payment arrangement. Complainant thought that the $700.00 was a catch-up payment for the payment arrangement that he was on before he received the shut-off notice. Tr. 12.
6. In July 2013, Complainant went to the PGW district office in South Philadelphia and presented his receipt for payment of $700.00. He was then told that the amount was to have been higher than the $700.00 that he paid. Complainant was then told to file a complaint with the PUC. Tr. 12-15.
7. In November 2013, Complainant recalled a discussion with a PGW representative to make a payment to resolve his Complaint. Complainant requested that the paperwork be sent to him so that he could consider the offer. Tr. 16.
8. In January 2014, Complainant called the PUC to find out when his evidentiary hearing was to be conducted. Complainant was told that his case was closed and that he had made a payment agreement with PGW. Complainant disputed that he made a payment agreement with PGW. Tr. 17.
9. Complainant has a household of four, Complainant, his wife, and his two daughters ages 15 and 13. Complainant’s gross household income is $4,000.00 per month. Tr. 17-18.
10. Complainant would like to go back to his payment agreement before he obtained the 10-day shut-off notice. Complainant does not desire to pay $1,400.00 to obtain the payment agreement. Complainant would like his gas service restored. Tr. 19-20.
11. Complainant believes PGW should be held responsible and accountable for its errors in operations. Tr. 25.
12. Complainant admitted that he has had prior payment arrangements with PGW, has had his gas service terminated before and has had to make arrangements to get his gas service restored. Tr. 30.
13. In July 2012, Complainant filed an informal complaint with the PUC and the PUC made a payment arrangement for the Complainant. Complainant construed the result as the PUC finding in his favor. Tr. 30-31.
14. Complainant carried a past-due deposit amount of $105.00 since the billing date of November 15, 2012, through billing date July 16, 2013. This past-due amount of $105.00 was on Complainant’s bill as a deposit due apart from the monthly charges for his gas usage. Tr. 38-40, PGW Exhibit 7.
15. Complainant never received a PGW letter dated November 14, 2013, to resolve this matter. Tr. 44-46, PGW Exhibit 2.
16. Linda Pereira is a senior customer review officer employed by PGW. A customer review officer handles PGW informal and formal complaints that customers file with the PUC. Ms. Pereira has been a senior customer review officer for 10 years and has been employed by PGW for 36 years. Tr. 56-57.
17. Ms. Pereira investigated the Complainant’s Complaint. Tr. 57.
18. On June 15, 2012, a 10-day shut-off notice was issued to Complainant stating payment should be made prior to June 27, 2012. PGW Exhibit 6.
19. On June 26, 2012, Complainant contacted the Company and was informed of the terms to avoid termination of service. Prior to filing the informal complaint at BCS Case No. 2992567, the Complainant failed to contact the Company for a payment arrangement on the outstanding balance; therefore, service termination procedure continued. Tr. 91, PGW Exhibit 6.
20. On July 10, 2012, Complainant called PGW because his gas service was terminated. Complainant was informed by PGW personnel that he must make a down payment before a payment agreement can be entered into. Tr. 62-64, PGW Exhibit 1.
21. Complainant filed an informal complaint at BCS Case No. 2992567 with the PUC that restored gas service through a decision dated July 26, 2012. The decision provided payment agreement terms to restore gas service. The terms were budget bill of $105.00 plus $91.00 towards arrearage with half of the security deposit to be paid to restore service, and the remaining security deposit paid at $52.50 after 30 days and $52.50 after 60 days. Tr. 64-66, PGW Exhibit 1.
22. Complainant’s gas was terminated in July 2012, because the Complainant failed to speak with a service representative to activate a new payment arrangement. Tr. 64-65, PGW Exhibit 1.
23. Complainant’s service was restored on August 30, 2012, after PGW received a $274.37 payment from Complainant on August 29, 2012. This amount covers the PUC BCS decision at Case No. 2992567 dated July 26, 2012, the current bill as of July 23, 2012, was $43.19 + reconnection fee of $123.23 + half the security deposit in the amount of $105.00 = ($43.19 + $123.23 + $105.00 = $271.42) $271.42. The difference between the amount paid by the Complainant $274.37 and the amount due to PGW, $271.42 is ($274.37 -$271.42 = $2.95.) $2.95. This $2.95 represents a vendor fee to make payment to PGW when Complainant goes to a place other than PGW to make payment toward his PGW bill. Tr. 66, 113-14, PGW Exhibits 1, 6.
24. The payment arrangement for BCS decision at Case No. 2992567 was $105.00 budget bill plus $91.00 towards arrearage for a total monthly payment of $196.00 ($105.00 + $91.00 = $196.00). Complainant was to be billed the next two months an additional amount of $52.50 for security deposit. This security deposit amount was to be paid in addition to the monthly payment arrangement. Tr. 67, PGW Exhibits 1, 6.
25. Complainant satisfied half of the security deposit when he paid $274.37 on August 29, 2012. Tr. 68.
26. On September 10, 2012, the check Complainant used to pay the $271.42 amount due on August 29, 2012, came back because of insufficient funds. Consequently, the payment arrangement was broken by the Complainant. PGW Exhibits 3, 5.
27. On October 19, 2012, Complainant paid the payment arrangement amount of $196.00 plus two months of security deposit (2 x 52.50 = $105.00) for a total payment of ($105.00 security deposit + $196.00 for payment arrangement = $301.00) $301.00.
28. PGW, however, billed Complainant $549.50 on October 16, 2012, for payment due by November 7, 2012. This bill is for gas service from September 13, 2012 through October 12, 2012. PGW stated because Complainant did not pay $549.50 but paid $301.00, the total payment of $301.00 went toward usage of gas service and nothing went toward the $105.00 due for the security deposit. Tr. 68-69, PGW Exhibit 7.
29. There was no additional payment made by the Complainant for the bill due by November 7, 2012. Tr. 69.
30. On April 15, 2013, the Complainant called the Company about gas service and was placed on a Company payment arrangement. The terms were a required upfront deposit in the amount of $603.00 and a monthly budget billed amount of $175.00. Tr. 70-71, PGW Exhibit 1.
31. On April 19, 2013, Complainant paid $603.00 for the deposit for the Company payment arrangement. PGW Exhibit 5.
32. On April 26, 2013, the Complainant’s payment received by the Respondent for the deposit for the Company payment arrangement was marked insufficient funds, which broke the Company’s payment arrangement. Tr. 71, PGW Exhibits 1, 5.
33. On July 15, 2013, Respondent sent out a 10-day shut-off notice. The notice indicated that the Complainant had 10 days to make payment arrangements for the bill for gas services rendered to avoid further collection activity on his gas service account. Tr. 86, PGW Exhibit 4 (amended).
34. On July 24, 2013, Complainant called and asked what amount was needed to avoid termination of gas service. Complainant was told he needed to pay $700.00 as a catch-up amount to return to the Company payment arrangement. The catch-up amount of $700.00 represents the monthly budget billed amount of $175.00 from the Company’s broken payment arrangement times the number of months that he had billed usage from the time the arrangement was broken to the present, which was from April to July or four months—$175.00 x 4 = $700.00. Tr. 71-72, 119-20, PGW Exhibit 1.
35. It is not clear that the customer representative for PGW told Complainant to call back to enter a payment arrangement. Recordings of calls with customers are kept for 90 days. The relevant call with the Complainant was beyond the 90 period when an attempt was made to retrieve it. Tr. 134.
36. The catch-up amount should have been $700.00 + $603.00 = $1,303.00 owed by the Complainant as a down payment for the terms of the Company payment arrangement on April 15, 2013. Tr. 100.
37. Respondent understood that for the Complainant to “return to the Company payment arrangement” meant that the Complainant would have to call the Company back to be put back on the Company payment arrangement. Tr. 73, PGW Exhibit 1.
38. Complainant paid $700.00 on July 26, 2013. Respondent claimed Complainant did not satisfy the security deposit until he made this $700.00 payment on July 26, 2013. Tr. 70, PGW Exhibit 7.
39. When Complainant paid $700.00 on July 26, 2013, the Company allocated the money toward what it had as an outstanding security deposit of $105.00, then the remaining money toward the catch-up amount for outstanding gas usage, which is $595.00 ($700.00 - $105.00 = $595.00). Because $700.00 was needed for the catch-up amount toward gas usage to avoid termination of service, and only $595.00 was used toward the catch-up amount for gas usage, the Company continued collection activity procedures to terminate gas service at the service address. Tr. 83-84, 93, Complainant Exhibit 2.
40. Respondent terminated gas service to the service address on August 14, 2013, for non-payment. Tr. 73, PGW Exhibit 1.
41. Even if all of the $700.00 was allocated toward the catch-up amount for gas usage resulting in the catch-up amount being satisfied, collection activity would have proceeded for termination of service because the Complainant would need to call Respondent to enter into a payment arrangement. Complainant needed to talk with a customer service representative who would enter a payment arrangement with Complainant. Tr. 84-85, 93-94, 101, 123-26.
42. If the Complainant had paid the $700.00 and called the Company back to make a payment arrangement, the Company would have honored the $700.00 payment and entered a payment arrangement if the call was within 30 days. Although the $700.00 was an incorrect catch-up amount, because the Complainant actually owed $1,303.00 for a catch-up amount, the Company would have honored the $700.00 payment. Tr. 129.
43. On August 15, 2013, Complainant discovered his gas service was shut-off and called Respondent to address the termination of gas service. Gross monthly household information was given for entering into CRP. Complainant ended the call and went to a district office of the Company to determine eligibility for CRP. The Company noted Complainant has more than two broken payment arrangements and was not eligible for CRP. Complainant was told that he would need $3,350.78 to restore service. This amount represents $2,912.55, which is the amount due for service, plus a reconnection fee of $123.23 and a security deposit of $315.00 ($2,912.55 + $123.23 + $315.00 = $3,350.78). Tr. 74-75, PGW Exhibit 1.
44. On August 15, 2013, Complainant filed an informal complaint at BCS Case No. 3136847 because of termination of service and requested a payment arrangement. PGW Exhibits 1, 6.
45. On August 16, 2013, the BCS informal complaint at Case No. 3136847 was dismissed because the Complainant has had two or more defaulted Company payment arrangements and one prior PUC defaulted payment arrangement. Pursuant to 66 Pa.C.S. § 1405(d) Complainant is not eligible for a subsequent PUC payment arrangement. Complainant must contact the Company for terms to restore gas service. PGW Exhibits 1, 6
46. On October 17, 2013, Complainant filed this instant Complaint against the Respondent at Docket No. C-2013-2388427. PGW Exhibit 1.
47. On November 13, 2013, the Respondent reported a settlement between the Company and Mr. Washington. PGW agreed to accept $1,417.23 to restore service within 30 days. The amount due in 30 days was $1,294.00, which is half of the outstanding balance for gas usage plus a reconnection fee in the amount of $123.23 ($1,294.00 + $123.23 = $1,417.23). PGW waived the security deposit. PGW reported that Mr. Washington agreed to be placed on a monthly budget bill of $117.00 plus $54.00 monthly toward the arrearage once service was restored. A certificate of satisfaction was sent. Tr. 76-77, PGW Exhibits 1, 2.
48. Ms. Pereira recalls having the conversation with Mr. Washington and that he agreed to the settlement terms on November 13, 2013. Ms. Pereira remembers that the Complainant’s wife was with the Complainant when she called to discuss the terms of the settlement which the Company drafted on November 13, 2013. Ms. Pereira does not recall Complainant stating he did not wish to make a decision over the phone. Tr. 77, 108.
49. The settlement documents were prepared by the Company the following day, November 14, 2013, and sent through the legal department. Tr. 77-78, 108-09, PGW Exhibit 2.
50. Ms. Pereira assumes the documents were sent together on November 14, 2013, to the inside address, which is the address of the Complainant. Ms. Pereira is not responsible for sending the documents out. Tr. 78, 110-11, PGW Exhibit 2.
51. Complainant did not receive the settlement documents prepared by PGW communicating the terms of the proposed settlement. Tr. 16.
52. Complainant has negotiated 30 payment arrangements since August 2003 and defaulted on 27 payment arrangements. Tr. 81, PGW Exhibit 3.
53. Complainant is aware from his past history with the Company that he had problems over the phone, which is why he went to the district office to make payment in person, speaking and making contact directly with the person. Complainant paid $700.00 in cash on July 26, 2013. Tr. 101-02.
54. PGW changed its procedures effective the end of August 2013 for payment arrangements after a shut-off notice has been issued. The new procedure is such that if the customer pays the amount stated on the shut-off notice (which is the catch-up amount from the latest payment agreement), the payment arrangement will automatically be reinstated. There is no need to call the Company to enter the payment arrangement. Tr. 82-83, 102-03.
55. Complainant’s shut-off notice was sent prior to the Company’s change in procedures to reinstate payment arrangements. Complainant needed to pay $3,383.93 to avoid a call back to PGW to get a payment arrangement or to attempt to enroll in CRP. Tr. 123, Complainant Exhibit 1.
56. Complainant has not entered into any previous payment arrangement without calling PGW to request one or speaking with someone at the district office about entering into a payment arrangement. Tr. 135.

DISCUSSION

In the present formal Complaint, Mr. Washington alleged that he was never given notice to call the Company in order to obtain a payment arrangement when he complied with the procedure communicated to him by Company personnel. The Complainant attempted to restore gas service and obtain a payment arrangement from PGW after his gas service was terminated on August 14, 2013, at the service address. PGW Exhibit 1. Complainant made a $700.00 payment to PGW on July 26, 2013, as he was told. The payment was in cash and was received prior to July 29, 2013, the date on the shut-off notice that service could be terminated. Complainant Exhibits 1, 2. Complainant is not contesting whether PGW had just cause to terminate gas services. Rather, Complainant is contesting that PGW did not provide notice of procedure to obtain a payment arrangement. Complainant contends that PGW should be held responsible for its errors in operation. Tr. 25.

Complainant also alleged that the Complaint filed in this matter was erroneously represented to the Commission as settled when he did not communicate with the Company that he agreed with the proposed settlement terms. Furthermore, the Complainant alleged that he was not given written paperwork that the proposed settlement was sent to the Commission and the matter was to be marked closed.

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S. § 332(a). To satisfy this burden, the Complainant must demonstrate that the Respondent was responsible for the problems alleged in the Complaint through a violation of the Code or a regulation or order of the Commission. This must be shown by a preponderance of the evidence. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n,* 578 A.2d 600 (Pa. Cmwlth. 1990) *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992). In addition, the Commission’s decision must be supported by “substantial evidence,” which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. *Norfolk and Western Railway Co. v. Pa. Pub. Util. Comm’n*, 489 Pa. 109, 413 A.2d 1037 (1980).

If the Complainant presents evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied his burden of proof. The Complainant would be required to provide additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm’n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

 While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm’n*, 768 A.2d 1217 (Pa. Cmwlth. 2001)(“*Milkie*”).

Relevant Broken Payment Arrangements

The Complainant had a Commission-issued payment arrangement by BCS decision at Case No. 2992567 dated July 26, 2012. PGW Exhibit 6. To restore service Complainant was to make a down-payment of $271.42 and then pay monthly a budget bill of $105.00 plus $91.00 monthly toward the outstanding balance for a total monthly payment of $196.00 ($105.00 + $91.00 = $196.00). Tr. 66-67, 113-14, PGW Exhibit 6. The amount of the $271.42 down-payment consisted of $43.19 for July 2012 usage, plus $123.23 reconnection fee, plus $105.00 half of the security deposit ($43.19 + $123.23 + $105.00 = $271.42). Tr. 66, PGW Exhibit 6. Consistent with the Commission payment arrangement terms, the Complainant was to be billed an additional $52.50 30 days after service was restored and 60 days after service was restored to cover the balance of the security deposit. Tr. 67, PGW Exhibit 6.

Complainant paid by check on August 29, 2012, for the $271.42 down-payment. PGW Exhibit 5. Gas service was restored at the service address on August 30, 2012. PGW Exhibit 1. However, the check used to pay the down-payment came back on September 10, 2012, because of insufficient funds. Consequently, the Complainant did not comply with the terms of the Commission payment arrangement to restore Complainant’s gas service. The Commission payment arrangement was broken as of September 10, 2012. PGW Exhibit 3.

Nevertheless, on October 19, 2012, Complainant made a payment of $301.00 to PGW for gas service. PGW Exhibit 7. This payment is equal to $105.00 monthly budget bill + $91.00 monthly payment towards arrears + $105.00 towards security deposit [(52.50 x 2 = $105.00) 60 days after gas service was to be restored = $301.00]. However, on October 16, 2012, PGW billed Complainant for the past due deposit in the amount of $105.00 + past due $105.00 monthly budget bill + past due $91.00 monthly payment towards arrears + current $105.00 monthly budget bill + current $91.00 monthly payment towards arrears + additional $52.50 deposit 30 days after restored service, which is ($105.00 + $105.00 + $91.00 + $105.00 + $91.00 + 52.50 = $549.50) $549.50. It is noted that this October 16, 2012, bill does not include the restoration fee of $123.23 that was past due and the July 2012 past due bill of $43.19 that remained outstanding when the down-payment check was returned for insufficient funds on September 10, 2012. This October bill represented gas service from September 12, 2012 through October 12, 2012. PGW Exhibit 7. Complainant failed to make any more payments for gas usage during the winter of 2012-2013. PGW Exhibit 5.

On April 15, 2013, Complainant contacted PGW to obtain a Company payment arrangement on his outstanding balance. Complainant was told by the Company that he must deposit $603.00 and that his monthly budget billed payments would be $175.00. PGW Exhibit 1. Complainant was placed on the Company payment arrangement with those terms. On April 19, 2013, Complainant paid $603.00 by check to PGW for gas usage as the down-payment for the Company payment arrangement. PGW Exhibit 5. On April 26, 2013, the $603.00 check for down-payment of gas service came back because of insufficient funds. Tr. 71, PGW Exhibits 1, 5. Because the down-payment term was not satisfied in the Company’s payment arrangement, Complainant broke the Company’s payment arrangement on April 26, 2013, the date the check was returned insufficient funds. PGW Exhibit 5.

Whether Complainant Had Notice to Contact Company After Catch-Up Payment Was Made to Reinstate Payment Agreement

On July 15, 2013, PGW sent to the service address a 10-day shut-off notice which stated that the Complainant’s gas service would be terminated on or after July 29, 2013, because Complainant had a past due balance for gas service. Complainant Exhibit 1, PGW Exhibit 4. On July 24, 2013, Complainant called PGW and asked what amount he needed to pay to avoid termination of gas service. Complainant was told he needed to pay $700.00 as the catch-up amount to return to the last payment arrangement he had with the Company. Tr. 71-72. The $700.00 represented the monthly budget bills that had not been paid under the Company’s payment arrangement; the missed payments were from April 2013 to July 2013 (4 months x $175.00 (monthly budget bill) = $700.00). Tr. 119-20, PGW Exhibit 1. On July 26, 2013, Complainant paid $700.00 to PGW. Complainant Exhibit 2.

There is no evidence that Complainant was told that after he paid the $700.00 that he was obligated to contact the Respondent in order to enter a payment arrangement with the Company. Respondent offered no evidence that Complainant had notice to contact the Company after he paid the $700.00 to enter a payment arrangement. Rather Respondent offered testimony that the recording of the conversation with the Company representative and the Complainant when he was instructed to pay $700.00 was no longer stored with the Company. Tr. 133. Complainant went to a PGW district office in person to make the $700.00 payment. Tr. 101-02, Complainant Exhibit 2. PGW did not provide evidence that Complainant was told in person after making the payment that he needed to contact PGW to get a payment arrangement. There is no evidence that Complainant had actual notice that he was to contact PGW to obtain a payment arrangement.

Actual notice is expressly and actually given and brought home to the party directly. The term, however, is generally given a wider meaning as embracing two classes, express and implied; the former includes all knowledge of degree above that which depends upon collateral inference, or which imposes upon the party further duty of inquiry; the latter imputes knowledge to the party because he is shown to be conscious of having the means of knowledge…actual notice is such notice as is positively proved to have been given to a party directly and personally, or such as he is presumed to have received personally because the evidence within his knowledge was sufficient to put him upon inquiry.

Black’s Law Dictionary 550 (Abridged 5th ed. 1983).

PGW attempted to show Complainant had actual notice and provided evidence that Complainant has entered into 30 payment arrangements with Respondent since August 2003. Tr. 81, PGW Exhibit 3. Complainant has previously been held accountable to contact the Company for a payment arrangement. PGW Exhibit 6. However, PGW admitted that it has changed the procedure to enter payment arrangements as of the end of August 2013, by not requiring a person seeking a payment arrangement to contact the Company once they have made the payment required by the Company. Tr. 82-83. 102-03.

I do not find that PGW satisfied actual notice to the Complainant to contact the Company after he had paid the requested $700.00 to reinstate the payment arrangement. Since the Company has changed its procedure for entering payment arrangements, the timing of a change in procedure may result in past procedures of a payment arrangement being incorrect. Although the Company stated that its change in procedure happened after the series of events germane to this instant Complaint, the Company should not rely on past experiences of the Complainant as notice of the proper procedure to enter a Company payment arrangement. If the change of Company procedure had occurred one month earlier, the $700.00 payment would have been all that was needed to gain a payment arrangement.

I do not find that past experience by the Complainant with the Company and payment arrangements, affords the Complainant actual notice to contact the Company after making the requested $700.00 to get a payment arrangement. Complainant paid the $700.00 as requested by the Company as the catch-up amount to the Company payment arrangement. Complainant personally went to a district office and made the $700.00 in person on July 26, 2013, prior to July 29, 2013, the date the shut-off notice would go into effect. Tr. 101-02, PGW Exhibit 5. Complainant performed as requested by the Company, in that he paid the $700.00, prior to July 29, 2013. I find it reasonable for the Complainant to expect that his gas service would be restored and that his previous payment arrangement would be reinstated. There is no record evidence that Complainant was told that he had to call PGW back to reinstate the Company payment arrangement which the $700.00 payment was calculated from to catch-up on missed payments.

Which Party Breached Company Payment Arrangement

On August 14, 2013, Complainant’s gas service was terminated at the service address for failure to make payment for gas service. Tr. 73, PGW Exhibit 1. Respondent alleged that Complainant owed $105.00 towards the security deposit from the PUC payment arrangement. Respondent contended that the $700.00 paid by Complainant on July 26, 2013, was allocated as $105.00 to settle the outstanding past security deposit due under the PUC payment arrangement and the remaining ($700.00 - $105.00 = $595.00) $595.00 towards the catch-up amount to the Company payment arrangement. Tr. 83-84, 93. The $595.00 did not satisfy the total $700.00 catch-up amount communicated to the Complainant by the Company; and consequently, the Company pursued collection activity to terminate the gas services of the Complainant at the service address.

The PUC payment arrangement was broken as of November 7, 2012, because Complainant did not pay the requested billed amount for the security deposit. Tr. 68-69, PGW Exhibit 7. Respondent made a Company payment arrangement that was independent of the PUC payment arrangement on April 15, 2013, with different terms. The Respondent cannot hold the Complainant accountable for a security deposit of a past PUC payment arrangement when the Respondent’s own personnel expressed that the Complainant is to make a catch-up payment for the Company payment arrangement that was initiated after the PUC payment arrangement. To hold the Complainant accountable for the security deposit term of the PUC payment arrangement on July 26, 2013, is to propose a new payment arrangement. Respondent’s own witness explained that the amount of $700.00 communicated to the Complainant was the missed monthly budget billed from the Company payment arrangement. Tr. 118-21. It is contradictory to use the term “catch-up” amount, if the Complainant is not being held to a term that was previously in place. Based on this reasoning, I do not find that the Company was proposing a new payment arrangement.

I do not find the rationale provided by the Respondent persuasive as to why Complainant’s act of paying $700.00 on July 26, 2013, in compliance to what he was told as reason for the payment arrangement to be broken. Consequently, I do not find that the Complainant broke the Company payment arrangement by paying just $700.00 on July 26, 2013. Rather, I find that the Complainant complied with what he was told to do to reinstate the Company payment arrangement.

PGW contended that even if all of the $700.00 was the paid before July 29, 2013, because Complainant did not contact PGW to express he desired to reinstate a payment arrangement, the Company would continue collections on the account to terminate gas service. Tr. 84-85. The Company stated that termination of gas service was justified because there was no payment arrangement between the Complainant and the Company. Tr. 84.

I agree that the Company payment arrangement that was in place as of April 15, 2013, to deposit $603 and pay a monthly budget amount of $175.00 was broken by the Complainant on April 26, 2013, when the check for the deposit was returned for insufficient funds. However, the Company’s own contact information on July 24, 2013, reads, “Customer of record called requested amount to avoid shut of[f], told customer of record he needs catch-up amount $700.00 **to get back on a payment arrangement.** Customer satisfied.” PGW Exhibit 1. This information affords an interpretation that performance of paying $700.00 will achieve reinstating a payment arrangement. The $700.00 figure as a “catch-up” amount is to catch-up to the terms of the Company payment arrangement offered by the Company in April 15, 2013.

There was an offer by the Company to pay the catch-up amount. Performance is defined as, “ The fulfillment or accomplishment of a promise, contract, or other obligation according to its terms, relieving such person of all further obligation or liability thereunder.” Black’s Law Dictionary 593 (Abridged 5th ed. 1983).

The Complainant performed by paying the catch-up amount. Once there is a promise and specific performance based on that promise, an agreement is established. The promise was “to get back on a payment arrangement.” That promise was not sustained. Consequently, I find that Respondent did not fulfill its obligation to the Complainant because PGW did not abide by the reinstated payment arrangement as suggested in the contact with the Company on July 24, 2013. PGW broke the revived payment arrangement of April 15, 2013. The Respondent should reinstate the April 15, 2013, payment arrangement and bill the Complainant according to those terms as the Complainant specifically performed as requested by the Respondent to “get back on a payment arrangement.”

It is noted that Complainant has had 30 payment arrangements with Respondent since August 2003. Tr. 81, PGW Exhibit 3. Section 1405(d) of the Public Utility Code states,

Absent a change in income, the Commission shall not establish or order a public utility to establish a second or subsequent payment agreement if a customer has defaulted on a previous payment agreement. A public utility may, at its discretion, enter into a second or subsequent payment agreement with a customer.

66 Pa.C.S. § 1405(d).

The April 15, 2013, payment arrangement was an instance where the Company acted in its discretion to enter a payment arrangement with the Complainant. The Complainant has not had a change in income. The Company breached this payment arrangement by not accepting the specific performance of $700.00 paid by the Complainant on July 26, 2013, to get back on the April 15, 2013, payment arrangement.

Pursuant to 66 Pa.C.S. § 1405(d), the Commission cannot order the Respondent to reinstate the April 15, 2013, payment arrangement because the Complainant most recently defaulted on the Commission-issued payment arrangement by BCS decision at Case No. 2992567 dated July 26, 2012. However, equity would restore the Complainant to the position he held prior to the Respondent’s breach of the payment arrangement, which would be a monthly budget bill of $175.00 since the catch-up payment of $700.00 was made timely. PGW Exhibit 1.

The Commission has looked at whether the Complainant has demonstrated good faith in payment history when it has the authority to provide a payment agreement*. See Hewitt* *v. PECO Energy Co.,* Docket No. F-2011-2273271, Opinion and Order, entered September 12, 2013. In the instant Complaint, the Complainant has had 30 payment arrangements since 2003. Tr. 81, PGW Exhibit 3. The Complainant’s payment history is sporadic in that the last payment made prior to the $700.00 paid on July 26, 2013, that was not returned for insufficient funds was on October 19, 2012. PGW Exhibit 6. Since March 2012, Complainant has made three payments with checks that were returned for insufficient funds. PGW Exhibit 5. Complainant has an outstanding balance as of September 17, 2013, of $2,588.94. PGW Exhibit 6. Complainant’s payment history does not demonstrate good faith conduct by the Complainant.

The bad faith actions of the Complainant coupled with the statute at 66 Pa.C.S. § 1405(d), result in the undersigned ALJ finding it reasonable not to exercise equity for the Complainant.

Complainant has demonstrated a poor payment history and history of default. The Commission will refrain from restoring the Complainant to his position prior to the breach by Respondent of the April 15, 2013, payment arrangement. Section 1407 of the Public Utility Code, 66 Pa. C.S. § 1407, permits PGW to require the Complainant to pay the outstanding balance in full, together with any applicable reconnection fee, before reconnecting service. Section 1404 of the Public Utility Code, 66 Pa.C.S. § 1404(1)(v), permits PGW to require the Complainant to pay a security deposit because the Complainant’s service was terminated for failure to comply with a payment agreement. PGW has assessed a security deposit in the amount of $234.00 requesting $117.00 or half due to restore service and the other half or $117.00 due 30 days after restoration of service. Consequently to restore gas service at the service address Complainant must pay, (outstanding balance $2,588.94 + reconnection fee 123.23 + half security deposit $117.00 = $2,829.17) $2,2829.17.

Processing of Certificate of Satisfaction

The Complainant filed an informal complaint on August 15, 2013, at BCS Case No. 3136847 to contest the termination of his gas service on August 14, 2013. PGW Exhibits 1, 6. BCS dismissed the informal complaint because the Complainant has had two or more defaulted Company payment arrangements and one prior PUC defaulted payment arrangement. Furthermore, pursuant to 66 Pa.C.S. § 1405(d) Complainant is not eligible for a subsequent PUC payment arrangement. PGW Exhibit 1. The Complainant filed the instant Complaint on October 17, 2013 still contesting the termination of gas service at the service address.

On November 13, 2013, Ms. Pereira understood that the Complainant reached a settlement to restore service. Tr. 76-78, PGW Exhibits 1, 2. Complainant is adamant, that he did not agree to any settlement. He agreed to have paperwork sent to him, to review the settlement terms that were proposed as he was driving and otherwise occupied with something else. Tr. 45-46.

Respondent’s witness, Ms. Pereira testified that there was a settlement. She testified that legal sent out the letter the next business day after she reached an oral settlement by telephone conversation with the Complainant. She did not send the letter; however, the inside address is to the Complainant at his address.

Complainant contended that he never received the letter stating there was a settlement or the terms of the settlement. Tr. 46-47. Complainant called the PUC in January 2014, asking when he was to have his evidentiary hearing on his Complaint.

I find the testimony of the Complainant credible. His actions support his contention that there was no settlement. The Complainant could have very well responded to Ms. Pereira saying, “Ok. Send me the paperwork.” Ms. Pereira could reasonably have interpreted the response to mean that he agreed to the settlement and that she should send the paperwork reflecting the agreement. Meanwhile, the Complainant could reasonably have meant to communicate, that he heard that she wanted to settle this dispute, but he just wanted her to send out the paperwork for his review. Either interpretation is reasonable, but it is clear that there is no meeting of the minds to forge an agreement if this is the case.

I believe that the Complainant never saw the paperwork, and thus, pursued his Complaint by inquiring about its status with the PUC. This action is very reasonable and understandable. The Complainant’s credibility is supported by the fact that a name other than his is on one page of the settlement documents as evidence that copies were sent to that individual. The Respondent did not provide any rational reason why the name “Kevin Young” instead of the Complainant’s name, “Kevin Washington” was copied on one of the pages of the settlement documents. PGW Exhibit 2. Respondent did not produce a witness from legal to confirm that the settlement documents were sent to the inside address.

I note that Respondent’s witness testified that recorded conversations are saved for 90 days. Tr. 133. The November conversation of the settlement would have still been available in January when the Complainant refuted that he had not settled his Complaint with the Respondent. It is conspicuous that the Respondent did not take action to save the conversation, especially if the conversation could have supported its position that a settlement was reached.

The evidence and the lack thereof are favorable towards the Complainant. I find that PGW did not process the certificate of satisfaction correctly.

PGW’s Responsibility for Operational Errors

Based on the findings abovementioned, I have found the following operational errors by PGW:

1. PGW did not process the $700.00 payment given to the Company in person by the Complainant correctly;
2. PGW did not provide effective actual notice to the Complainant that further contact with the Company was needed if he desired to be reinstated on the April 15, 2013, payment arrangement; and
3. PGW did not process the certificate of satisfaction at this instant Complaint correctly.

I agree with the Complainant that PGW should be held responsible and accountable for its operational errors.

Consequence of PGW Operational Errors

The Public Utility Code Section 3301(a) states, in relevant part,

If any public utility … shall violate any of the provisions of this part, or shall do any matter or thing herein prohibited; or shall fail, omit, neglect or refuse to obey, observe, and comply with any regulation or final direction, requirement, determination or order made by the Commission, … such public utility, person or corporation for such violation, omission, failure, neglect, or refusal, shall forfeit and pay to the Commonwealth a sum not exceeding $1,000, to be recovered by an action of assumpsit instituted in the name of the Commonwealth. In construing and enforcing the provisions of this section, the violation, omission, failure, neglect, or refusal of any officer, agent, or employee acting for, or employed by, any such public utility, person, or corporation shall, in every case be deemed to be the violation, omission, failure, neglect, or refusal of such public utility, person or corporation.

66 Pa.C.S. § 3301(a). In the case of “negligent” violations the presumption is that the penalty will range from $0 to $500 per day.” *Ronald A. Meder v. Peoples Natural Gas Co.,* Docket No. F-01620640 (Order entered August 21, 2006), 2006 WL 2472127 (Pa. P.U.C.) *and Joseph A. Rosi v. Bell Atlantic-Pennsylvania, Inc.,* Docket No. C-00992409 (Order entered March 16, 2000), 2000 WL 1407936 (Pa. P.U.C.). On November 29, 2007, the Commission adopted, *Final Policy Statement for Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations;* Docket No. M-00051875, 37 Pa.B. 6755 (Order published December 22, 2007) (52 Pa.Code Chapter 69). I find this policy statement controlling on the issue of the amount of the civil penalty involving the violation in this proceeding.

52 Pa.Code § 69.1201(a) states,

The Commission will consider specific factors in evaluating litigated … cases involving violations of 66 Pa.C.S. (relating to the Public Utility Code) and this title. These factors and standards will be utilized by the Commission in determining if a fine for violating a Commission order, regulation or statute is appropriate.

Section 69.1201(c) goes further to list the factors and standards to be considered; they are,

(1) Whether the conduct at issue was of a serious nature… such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing, or technical errors, it may warrant a lower penalty.

(2) Whether the resulting consequences of the conduct at issue were of a serious nature…such as personal injury or property damage, the consequences may warrant a higher penalty.

(3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.

(4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

(5) The number of customers affected and the duration of the violation.

(6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.

(7) Whether the regulated entity cooperated with the Commission’s investigation. Facts establishing bad faith, active concealment of violations or attempts to interfere with Commission investigations may result in a higher penalty.

(8) The amount of the civil penalty of fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

(9) Past Commission decision in similar situations.

(10) Other relevant factors.

52 Pa.Code § 69.1201(c).

I do not find that the record evidence in the instant Complaint contains the appropriate data to perform an analysis consistent with 52 Pa.Code § 69.1201 policy to determine a fine amount, if indeed a fine is warranted. Consequently, it is recommended that the matters of operation by PGW regarding communication of settlements; processing certificates of satisfaction; and notice and procedure to customers to reinstate payment arrangements be investigated by the Commission through the Law Bureau and the Bureau of Consumer Services and any other bureau of the Commission that is found appropriate to examine these issues. It is further recommended that once the investigation is concluded, the bureaus should provide and report with any recommendations to the Commission for review.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.
2. “Burden of proof” means a duty to establish one’s case by a preponderance of the evidence, which requires that the evidence be more convincing by even the smallest degree, than the evidence presented by the other side. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

The Complainant has the burden of proof. 66 Pa.C.S. § 332(a).

The Complainant has sustained his burden of proof regarding the operational errors by Respondent but has failed to sustain his burden of proof regarding restoration of payment arrangement.

That the Respondent may require a deposit when the Complainant failed to comply with material terms of a settlement or payment agreement. 66 Pa.C.S. § 1404(a)(1)(v).

That Respondent may require full payment of any outstanding balance plus any reconnection fee when terminated prior to any restoration of service, when Complainant has defaulted on two or more payment arrangements. 66 Pa.C.S. 1407(c).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint filed by Kevin Washington against Philadelphia Gas Works at Docket No. C-2013-2388427 is sustained in part regarding PGW to be held responsible and accountable for its operational errors and denied in part regarding the restoration of gas service and reinstatement of the Company-issued payment arrangement.
2. That the Pennsylvania Public Utility Commission may at its discretion direct the Law Bureau, Bureau of Consumer Services and any other bureau to investigate the operational procedures of Philadelphia Gas Works regarding its certificates of satisfaction and payment arrangements consistent with the discussion contained herein.
3. That a copy of this Order be served on the Law Bureau of the Pennsylvania Public Utility Commission.
4. That a copy of this Order be served on the Bureau of Consumer Services of the Pennsylvania Public Utility Commission.
5. That the Secretary’s Bureau mark this docket at Docket No. C-2013-2388427 closed.

Date: August 27, 2014 /s/

 Angela T. Jones

 Administrative Law Judge

1. Pursuant to 66 Pa.C.S. § 1407 a public utility may require a reconnection fee and full payment of any outstanding balance to restore service. [↑](#footnote-ref-1)
2. Pursuant to 66 Pa.C.S. § 1404(a)(1)(v) a public utility may require a deposit from an applicant that was a customer whose service was terminated for failure to comply with a payment agreement. The total security deposit is $234.00. [↑](#footnote-ref-2)
3. Page two of the original is the same as Complainant Exhibit 1. Page two was removed so that there would be no duplication. [↑](#footnote-ref-3)