**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held March 17, 2016

Commissioners Present:

Gladys M. Brown, Chairman

Andrew G. Place, Vice Chairman

Pamela A. Witmer

John F. Coleman, Jr.

Robert F. Powelson

Petition of Zakkiyah Salahuddin for P-2015-2504703

Rescission or Amendment of the

Commission’s Final Order, Entered

on July 23, 2015, at Docket No.

F-2015-2463441

Zakkiyah Salahuddin F-2015-2463441

 v.

Metropolitan Edison Company

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Rescission or Amendment (Petition),[[1]](#footnote-1) filed by Zakkiyah Salahuddin (Complainant or Ms. Salahuddin) on September 21, 2015, concerning our Final Order, entered on July 23, 2015, at Docket No. F-2015-2463441 (*July 2015 Final Order*). An Answer to the Petition was filed by Metropolitan Edison Company (Met-Ed) on February 5, 2016.[[2]](#footnote-2) For the reasons stated below, we shall deny the Complainant’s Petition.

**History of the Proceeding**

 On January 14, 2015, Ms. Salahuddin filed a Formal Complaint (Complaint)[[3]](#footnote-3) against Met-Ed alleging that Met-Ed was threatening to shut off or had already shut off her service and that there were incorrect charges on her bill. The Complainant also alleged a reliability, safety or quality problem with Met-Ed’s electric service. For relief, the Complainant requested that the Commission investigate this matter and credit all incorrect charges on her account. Complaint at 2-3.

 On February 11, 2015, Met-Ed filed an Answer with New Matter in response to the Complaint, in which it admitted and denied certain material allegations contained in the Complaint.[[4]](#footnote-4) Specifically, Met-Ed denied that there were incorrect charges on the Complainant’s bill.[[5]](#footnote-5) Answer at 1-5.

In its New Matter, which was accompanied by a Notice to Plead, Met-Ed averred that Ms. Salahuddin has not made any payments to her account since establishing service despite her obligation to do so.[[6]](#footnote-6) Met-Ed asserted that pursuant to its tariff and Commission Regulations, it has the authority to begin suspension or termination procedures if undisputed charges become delinquent. Met-Ed, therefore, requested that the Commission dismiss the Complaint in its entirety with prejudice. Answer at 6.

The Complainant did not file an Answer to Met-Ed’s New Matter.

On April 7, 2015, the Commission issued a Telephonic Hearing Notice that scheduled an initial telephonic hearing for this matter for May 13, 2015. In particular, the Hearing Notice stated, among other things, as follows: “Attention: You may lose this case if you do not take part in this hearing and present facts on the issues raised.” I.D. at 2.

 In addition, a Prehearing Order dated April 9, 2015, was issued establishing the procedural issues pertaining to the hearing. Similar to the Hearing Notice, the Prehearing Order stated as follows:

If a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party.

*Id.*

 Both the Hearing Notice and the Prehearing Order were sent via first class mail through the United States Postal Service to the address the Complainant provided in her Complaint. Neither document was returned to the Commission as undeliverable. *Id.*

 On May 13, 2015, a telephonic hearing was held.[[7]](#footnote-7) Met-Ed appeared and was represented by counsel, who was accompanied by one witness. No one appeared on behalf of the Complainant.

On the day of the hearing, the ALJ made two attempts to call the number provided by the Complainant for the hearing but received an outgoing message stating the number is temporarily not in service. The ALJ also attempted to call two alternate numbers provided by counsel for Met-Ed. Again, the ALJ received an outgoing message on both numbers that stated the telephone numbers were not in service. Furthermore, the ALJ waited for about twenty minutes and tried all three numbers again, but received the same outgoing message stating that the telephone numbers are not in service. [[8]](#footnote-8) I.D. at 5.

Prior to the conclusion of the hearing, Counsel for Met-Ed indicated that pursuant to the Interim Order, she attempted to contact the Complainant on the phone number the Complainant provided in her Complaint but was unsuccessful. Counsel for Met-Ed then proceeded to send the Complainant a correspondence dated March 12, 2015. Counsel for Met-Ed indicated that after the correspondence, she was able to speak to the Complainant.[[9]](#footnote-9) Counsel for Met-Ed further indicated that after receiving the Prehearing Order directing Met-Ed to reach out to the Complainant at least a week before the hearing, she attempted to contact the Complainant on May 1, 2015, but was unable to reach her and was also unable to leave a message for the Complainant. Counsel for Met-Ed again proceeded to send the Complainant another correspondence dated May 5, 2015, stating that she had been attempting to reach the Complainant. Counsel for Met-Ed also reminded the Complainant about the scheduled telephonic hearing in her correspondence. For these reasons, counsel for Met-Ed moved to dismiss the complaint with prejudice for failure to appear. I.D. at 6-7.

The record in this case contains a nine-page transcript. The record was closed on May 22, 2015.

 On June 15, 2015, the Commission issued the Initial Decision of Administrative Law Judge (ALJ) Joel H. Cheskis, which granted Met-Ed’s motion to dismiss the Complaint for failure to prosecute because the Complainant failed to appear for the hearing despite being provided with notice of the hearing. I.D. at 1 and 7. Since no timely Exceptions to the ALJ’s Initial Decision were filed by the July 6, 2015 deadline, the Commission entered its *July 2015 Final Order*, which permitted the Initial Decision of ALJ Cheskis to become final without further Commission action.[[10]](#footnote-10) As noted, *supra*, on September 21, 2015, the Complainant filed a Petition for Rescission of the Commission’s *July 2015 Final Order*. Met-Ed filed an Answer to the Petition on February 5, 2016.

**Discussion**

 **A. Nature of Filing**

We begin by considering the nature of the Complainant’s filing because the analysis to be applied depends on the type of filing before us. As noted above, no parties filed Exceptions to the ALJ’s Initial Decision within the requisite twenty-day time period for filing Exceptions set forth in 52 Pa. Code § 5.533(a). As the Initial Decision was issued on June 15, 2015, Exceptions were due by July 6, 2015. Therefore, in accordance with Section 332(h) of the Public Utility Code (Code), 66 Pa. C.S. § 332(h), the ALJ’s Initial Decision became final by operation of law and the Commission entered a Final Order on July 23, 2015. Accordingly, we shall treat the Complainant’s filing entitled “Settling Resolution Conference” as a Petition for Rescission or Amendment of the *July 2015 Final Order*, since a Petition for Rescission or Amendment may be filed at any time. 52 Pa. Code § 5.572(d).

**B. Legal Standards**

We note that any issue that we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the parties. [*Consolidated Rail Corporation v. Pa. PUC,* 625 A.2d 741 (Pa. Cmwlth. 1993);](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) *also see, generally,* [*University of Pennsyl­vania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef)

The Code establishes a party’s right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. §§ 703(f) and 703(g), relating to rehearings, as well as rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision.

A petition to modify or rescind a final Commission decision may only be granted judiciously and under appropriate circumstances, because such an action results in the disturbance of final orders. *City of Pittsburgh v. Pennsylvania Department of Transportation,* 490 Pa. 264, 416 A.2d 461 (1980). Additionally, we recognize that while a petition under Section 703(g) may raise any matter designed to convince us that we should exercise our discretion to amend or rescind a prior order, at the same time “[p]arties . . ., cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them.” *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (Order entered December 17, 1982) (quoting [*Pennsylvania Railroad Co. v. Pennsylvania Public Service Commission*, 179 A. 850, 854 (Pa. Super. Ct. 1935)](http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=118+Pa.+Super.+380)). Such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by the Commission. *Duick* at 559.

**ALJ’s Initial Decision**

 ALJ Cheskis made eleven Findings of Fact and reached seven Conclusions of Law. I.D. at 3-4, 6. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

 In his Initial Decision, the ALJ explained that despite being served with a notice of the hearing, no one appeared on behalf of the Complainant at the date and time set for the hearing, and there was no request for a postponement or continuance of the hearing on behalf of the Complainant. I.D. at 4-5. According to the ALJ, the Hearing Notice and the Prehearing Order were sent to the Complainant by regular first class mail and neither was returned to the Commission as undeliverable. Hence, the ALJ concluded that there is a presumption that the documents were received by the Complainant. *Id*. at 5, citing *Berkowitz v. Mayflower Securities, Inc.,* 455 Pa. 531, 317 A.2d 584 (1974); *Meierdierck v. Miller,* 394 Pa. 484, 147 A.2d 406 (1959); *Samaras v. Hartwick*, 698 A.2d 71 (Pa. Super. Ct. 1997); *Judge v. Celina Mutual Insurance Co.,* 444 A.2d 658 (Pa. Super. Ct. 1982). The ALJ further explained that the Complainant was notified about the hearing and was given an opportunity to be heard in this proceeding, but decided not to show up for the hearing. Consequently, the Complainant’s due process rights were fully protected. I.D. at 5, citing *Sentner v. Bell Telephone Company of Pennsylvania,* Docket No. F-00161106 (Order entered October 25, 1993); 52 Pa. Code § 5.245(a).

The ALJ also explained that Counsel for Met-Ed indicated that she had no contact with the Complainant regarding this matter despite several attempts to reach the Complainant to discuss the case. I.D. at 5, citing Tr. at 6-7. The ALJ noted that during the hearing, Counsel for Met-Ed moved to have the Complaint dismissed with prejudice for lack of prosecution. I.D. at 5, citing Tr. at 7. The ALJ, therefore, concluded that by failing to appear and present evidence in support of her Complaint, the Complainant failed to carry her burden of proof. *Id.* at 5.

Consistent with all of the above reasons, the ALJ dismissed the Complaint with prejudice without addressing the merits of the Complaint. *Id.* at 5-6.

**Petition for Rescission and Amendment**

In her Petition entitled “Settling Resolution Conference,” the Complainant states the following:

On May 13, 2015, at the above-captioned docket number, Zakkiyah Salahuddin is attempting to resolve this matter. Respondent (sic) is contacting the mediator to set forth a rescheduling of a conference hearing about resolving this case. Due to death in the family the due date was not in compliance to be met.

Unfortunately, this issue has not been resolved and the party is still attempting to resolve it.

P.S. If you have any questions, please contact me at your convenience.

Petition at 1.

**Answer to Petition**

 In its Answer to the Petition, Met-Ed contends that the Complainant did not present any argument to support her request for a resolution of the matter and thus, Commission precedent supports a denial of the Petition. Met-Ed cited to *Douglas Champlin v. PPL Electric Utilities Corporation,* Docket No. C-2012-2328598 (Order entered September 26, 2013) (*Champlin*), in which, the Commission denied a Petition for Rescission filed by a complainant who failed to participate in his scheduled telephonic evidentiary hearing. According to Met-Ed, in *Champlin*, the Commission found there was no evidence presented to show good faith efforts to attend the hearing. Answer to Petition at 6.

 Additionally, Met-Ed avers that nothing in the Petition indicates that the Complainant demonstrated good faith efforts on her part to attend the hearing. Met-Ed contends that the Complainant appears to be under the impression that the matter is still operating under the Interim Order and never even acknowledged in her Petition that the hearing already took place. Further, Met-Ed argues that other than alleging a death in the family, the Complainant provided no explanation or any reason why she failed to contact the Commission either prior to or immediately after the hearing. *Id.*

 Met-Ed also avers in its Answer that subsequent to the *July 2015 Final Order,* the Complainant filed two informal complaints with the BCS – one on September 9, 2015, (*September 2015 Informal Complaint*) and one on October 13, 2015, (*October 2015 Informal Complaint*) – in response to lawful termination notices that she received from Met-Ed pursuant to the undisputed outstanding balance on her account. According to Met-Ed, the *September Informal 2015 Complaint* at BCS Case No. 3382244, raised the same issues in the instant proceeding, and neither addressed the *July 2015 Final Order,* nor the Complainant’s inability to attend the hearing. Met-Ed avers that the BCS dismissed and closed the *September 2015 Informal Complaint* on September 10, 2015, because it raised the same issues that had already been dismissed in the *July 2015 Final Order*. *Id.* at 3. With regard to the *October 2015 Informal Complaint* at BCS Case No. 3392351, Met-Ed avers that the Complainant alleged, among other things, that she was not responsible for the charges on her April 2014 bill. Again, Met-Ed notes that the Complainant addressed neither the *July 2015 Final Order,* nor the *September 2015 Informal Complaint* that was dismissed by the BCS. According to Met-Ed, the BCS also dismissed the *October 2015 Complaint* pursuant to the *July 2015 Final Order*, and closed the case on October 28, 2015. *Id.*

In light of the aforementioned informal complaint filings made by the Complainant, Met-Ed is of the opinion that the Complainant has not acted in good faith and is not genuinely seeking to amicably resolve the issue with the Company as she claims in her Petition. Further, Met-Ed is of the opinion that the Complainant is merely attempting to stay any lawful termination of her electric by filing the instant untimely Petition. Met-Ed asserts that the Complainant has not provided any justification to warrant granting the relief she is seeking. For these reasons, Met-Ed requests that the Commission deny the Petition. *Id.* at 6-7.

**Disposition**

We find that the Petition fails to set forth any arguments that warrant special relief. Therefore, we shall decline to exercise our discretion to rescind the ALJ’s Initial Decision, which became our final action upon the conclusion of the period for filing Exceptions.

Although the Complainant avers that there was a death in her family, she never provided any other specific information or contacted the ALJ, either before the hearing to request a continuance, or after the hearing to explain her absence.

In this case, the Complainant never disputed that she received notice of the hearing. As such, the ALJ properly ruled that because the Hearing Notice and the Prehearing Order were sent to the Complainant by first class mail at the address on her Complaint and were not returned to the Commission, there is a presumption that the documents were received by the Complainant. *See*, *Berkowitz, supra*. Additionally, the ALJ attempted to contact the Complainant numerous times, and at three different telephone numbers on the day of the hearing, but was not able to reach the Complainant. Thus, the Complainant clearly was advised of her obligation to take part in the hearing and to present evidence on the issues raised; but by failing to participate in the hearing, she waived her opportunity to participate and advance her Complaint. 66 Pa. C.S. § 332(f).

Out of concern for the waste of the Commission’s and the respondents’ time and resources, on many occasions, we have dismissed *pro se* complaints, with prejudice, for failure to appear at a hearing. *See, e.g., Marilyn Day v. PECO Energy Company*, Docket No. 2010-2181515 (Order entered June 10, 2011); and *Patricia Geary v. Verizon Pennsylvania, Inc.*, Docket No. C-2009-2118625 (Order entered September 16, 2010). However, we have also declined to dismiss complaints, with prejudice, if the complainants made good faith attempts to attend their hearings on time. *See, e.g., Yomari Then v. Philadelphia Gas Works*, Docket No. F-2012-2318264 (Order entered June 13, 2012); *Windell C. Wiggins v. PECO Energy Company*, Docket No. C-2010-2190335 (Order entered October 27, 2011); and *Edward B. Ference v. Equitable Gas Company*, Docket No. C-20015840 (Order entered February 12, 2002).

 Consistent with our prior decisions, we agree with the ALJ’s Initial Decision that dismisses the Complaint, with prejudice, due to the Complainant’s failure to appear for the scheduled hearing and prosecute the Complaint. We recognize that the dismissal of the Complaint, with prejudice, may appear to be a severe sanction on the Complainant. Nevertheless, our Regulations permit the imposition of sanctions where a party, after being notified, fails to appear or to be represented at a scheduled conference or hearing. 52 Pa. Code § 5.245. The ALJ’s Prehearing Order clearly gave the parties notice of the date and time of the hearing, the possibility of sanctions if a party failed to appear, as well as the procedure for requesting a continuance. Under the facts of this specific case, we conclude that in light the Complainant’s failure to abide by the rules in the April 9, 2015 Prehearing Order, it would not be prudent for us to grant the Complainant’s Petition to rescind the ALJ’s Initial Decision.[[11]](#footnote-11)

**Conclusion**

In light of the foregoing discussion, we agree with the ALJ that by failing to appear and present evidence in support of her Complaint, the Complainant failed to carry her burden of proof. As such, we shall deny the Complainant’s Petition, consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition for Rescission and Amendment of the Commission’s Final Order, entered on July 23, 2015, at Docket No. F-2015-2463441, filed by Zakkiyah Salahuddin on September 21, 2015, is denied, consistent with this Opinion and Order.
2. That the proceeding at this docket be marked closed.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: March 17, 2016

ORDER ENTERED: March 17, 2016

1. While the Complainant’s Petition was titled “Settling Resolution Conference,” we will consider it a Petition for Rescission or Amendment of the Commission’s Final Order, entered on July 23, 2015, at Docket No. F-2015-2463441, for the reasons set forth herein. [↑](#footnote-ref-1)
2. On January 29, 2016, the Commission sent a Secretarial Letter to the parties of record informing them that there was no certificate of service or other indication that the parties of record were served with the Petition. The Secretarial Letter also informed Met-Ed that a response to the Petition would be due on or before February 8, 2016. [↑](#footnote-ref-2)
3. This Complaint is a timely appeal of a Bureau of Consumer Services (BCS) informal decision at BCS Case No. 3241299, dated December 16, 2014. [↑](#footnote-ref-3)
4. Met-Ed indicated that pursuant to 52 Pa. Code § 5.63, if the Complainant failed to file a written response answering the New Matter within twenty days from the date of service of the Notice to Plead, a decision may rendered against her. [↑](#footnote-ref-4)
5. Met-Ed averred that the outstanding balance on the Complainant’s account as of December 31, 2014, was $1,763.94. Answer at 3. [↑](#footnote-ref-5)
6. According to Met-Ed, the Complainant established service with the Company on September 13, 2013. Met-Ed also averred that the Complainant had an outstanding balance of $613.54 from a previous address that was transferred to her current location. Answer at 2. [↑](#footnote-ref-6)
7. On May 14, 2015, the Mediator issued a memo stating that pursuant to the Interim Order, Met-Ed has submitted a report to the Commission’s Mediation Unit. [↑](#footnote-ref-7)
8. The three phone numbers for the Complainant include the number she provided in her Complaint, a number she provided for the hearing, and a number for the Complainant on Met-Ed’s business records. Tr. at 6. [↑](#footnote-ref-8)
9. Counsel for Met-Ed indicated that on the day she spoke with the Complainant, the Complainant told her that she was willing to have a hearing and was waiting for the Hearing Notice. Counsel for Met-Ed stated that she reminded the Complainant of the hearing date and time during the conversation and through the correspondences she sent to the Complainant. Tr. at 7. [↑](#footnote-ref-9)
10. On July 6, 2015, Met-Ed filed a letter with the Commission advising that the Company will not file Exceptions to the ALJ’s Initial Decision. [↑](#footnote-ref-10)
11. We find that this case is distinguishable from *Wiggins, supra*. In *Wiggins*, we dismissed a *pro se* complainant’s complaint, without prejudice, because the complainant made an effort to attend the initial hearing, but could not be found in a timely manner in order to participate because he was located in a different area of the building in which the hearing was to be held. In this case, the Complainant failed to appear for her scheduled hearing without properly requesting a continuance in advance of the hearing. There is also no evidence that the Complainant failed to receive the Telephonic Hearing Notice or the Prehearing Order advising her of the date and time of the hearing. [↑](#footnote-ref-11)