

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Chris Falvey

v.

Metropolitan Edison Company

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C-2023-3043269

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This decision denies the Formal Complaint of Chris Falvey because he failed to appear at the scheduled hearing and prosecute his Complaint.

HISTORY OF THE PROCEEDING

On September 27, 2023, Chris Falvey (Mr. Falvey or Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Met-Ed, Company, or Respondent) alleging that there are incorrect charges on his electricity bills from Met-Ed. As relief, the Complaint requests that the Commission look into his bills from Met-Ed and investigate the manyfold increase over the years.

On October 17, 2023, Met-Ed filed an Answer denying all material allegations of fact and conclusions of law in the Complaint. Along with the Answer, Met-Ed filed a New Matter in which it requested that this matter be referred to the Office of Administrative Law Judge's Mediation Unit.

By Interim Order dated November 15, 2023, Chief Administrative Law Judge, Charles E. Rainey, set the matter for resolution conference. The parties were unable to reach a resolution of the matter.

An Initial Call-in Telephonic Hearing Notice dated January 8, 2024, notified the parties that an initial call-in telephone hearing was scheduled on February 20, 2024, at 10:00 a.m. The Hearing Notice provided the following instructions:

To participate in the hearing,

- You must dial the toll-free Conference number below
- You must enter the PIN number below when instructed
- You must speak your name when prompted, and press #
- Then, the telephone system will connect you to the hearing

Toll-free Bridge Number: 1-866-560-8322
PIN Number: 36676820

(Emphasis in the original). The Hearing Notice further stated, "You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised."

On January 17, 2024, I issued a Prehearing Order. The Prehearing Order directed the parties to comply with various procedural requirements, reminded them of the time and date of the hearing and provided instructions for calling in to the hearing. More specifically, the Prehearing Order instructed the parties as follows:

To participate in the hearing, you must dial the toll-free number listed below. You will be prompted to enter a PIN number, which is also listed below. You will be asked to speak your name, press the # key, and then the telephone system will connect you to the hearing. If you have any witnesses you want to have present during the hearing who are participating from a separate phone, you must provide them with the telephone number and PIN Number.

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(Emphasis in the original). In addition, the Prehearing Order warned in bold type: “**You may lose the case if you do not take part in this hearing and present evidence on the issues raised.**” (Emphasis in the original).

On February 5, 2024, the Complainant submitted to me via email a written request for a 90-day continuance of the hearing. As reason for his request, Mr. Falvey cited a recent diagnosis that required medical treatment. On February 7, 2024, I forwarded Mr. Falvey’s request to Met-Ed’s counsel, Margaret A Morris, Esq., who did not object to Mr. Falvey’s request.

By email dated February 12, 2024, I informed the parties that Mr. Falvey’s request for continuance was granted and that the February 20, 2024, hearing was cancelled.

A Corrected Hearing Cancellation/Reschedule Notice¹ was also issued on February 12, 2024, informing the parties that the initial call-in telephone hearing was scheduled on May 10, 2024, at 10:00 a.m. The Corrected Hearing Cancellation/Reschedule Notice provided the following instructions:

¹ A prior Hearing Cancellation/Reschedule Notice was issued without the new hearing date.

To participate in the hearing,

- You must dial the toll-free Conference number below
- You must enter the PIN number below when instructed
- You must speak your name when prompted, and press #
- Then, the telephone system will connect you to the hearing

Toll-free Bridge Number: 1-866-560-8322

PIN Number: 36676820

(Emphasis in the original). The Hearing Notice further stated, “You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised.”

On April 10, 2024, I issued a second Prehearing Order. Like the Prehearing Order of January 17, 2024, the second Prehearing Order instructed the parties as follows:

To participate in the hearing, you must dial the toll-free number listed below. You will be prompted to enter a PIN number, which is also listed below. You will be asked to speak your name, press the # key, and then the telephone system will connect you to the hearing. If you have any witnesses you want to have present during the hearing who are participating from a separate phone, you must provide them with the telephone number and PIN Number.

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(Emphasis in the original). In addition, the Prehearing Order warned in bold type: “**You may lose the case if you do not take part in this hearing and present evidence on the issues raised.**” (Emphasis in the original).

The two Hearing Notices and the two Prehearing Orders were served electronically upon the Complainant at the email address that he provided to and registered with the Commission.² Neither the Hearing Notices nor the Prehearing Orders were returned as undeliverable.

The hearing convened as scheduled on May 10, 2024. Margaret Morris, Esq. appeared representing the Respondent. The Complainant failed to call in. The Complainant was given an additional 10-15 minutes to call in but failed to do so.

At the hearing, counsel for Met-Ed moved that the Complaint be dismissed for lack of prosecution pursuant to 52 Pa. Code § 5.245. The Motion was held in abeyance.

² In the Formal Complaint form, the Complainant checked the box to receive all documents by email at the email address he provided on the form and registered with the Commission. However, the Complainant also registered for eFiling and eService.

When Complainant registered for an eFiling account he agreed to the following terms and conditions:

I agree that I will accept electronic service in the Commission proceeding in which I am a party of record. By creating this account, notification of filings via electronic mail shall constitute valid service of Commission documents. I understand that such electronic service of any and all documents will be substituted for service by mail. I agree to be served via email with all subsequent filings. I agree that email notices will be sent on the same day the document is posted.

By clicking on the 'Create Account' button below, [I am] agreeing to all the Terms and Agreements listed above.

eFiling Registration Page, <https://efiling.puc.pa.gov/Accounts/Create?accountType=I> (last visited May 14, 2024).

On May 10, 2024, at 1:50 p.m., counsel for Met-Ed informed me that Mr. Falvey had contacted her paralegal via email stating that “This appointment will be rescheduled as no one contacted me at 10 am as stated and I have prior commitment.” Ms. Morris instructed Mr. Falvey to contact the presiding officer. To date, there has been no contact or communication from Mr. Falvey with me or anyone else at the Commission regarding his failure to appear at the May 10, 2024, hearing.

The record in this matter closed on June 3, 2024, upon receipt of the hearing transcript.

FINDINGS OF FACT

1. The Complainant is Chris Falvey.
2. The Respondent is Metropolitan Edison Company.
3. On September 27, 2023, Mr. Falvey filed a Formal Complaint against Met-Ed alleging that there are incorrect charges on his electricity bills.
4. As relief, the Complaint requests that the Commission look into his bills from Met-Ed and investigate the manyfold increase over the years.
5. On October 17, 2023, Met-Ed filed an Answer and New Matter.
6. An Initial Call-in Telephonic Hearing Notice dated January 8, 2024, notified the parties that an initial call-in telephone hearing was scheduled on February 20, 2024, at 10:00 a.m.

7. The Initial Call-In Telephone Hearing Notice provided the following instructions:

To participate in the hearing,

- You must dial the toll-free Conference number below
- You must enter the PIN number below when instructed
- You must speak your name when prompted, and press #
- Then, the telephone system will connect you to the hearing

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January 8, 2024, Initial Call-In Hearing Notice, p. 1 (emphasis in the original).

8. The Initial Call-In Hearing Notice stated, “You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised.”

January 8, 2024, Initial Call-In Hearing Notice, p. 1.

9. A Prehearing Order dated January 17, 2024, directed the parties to comply with various procedural requirements, reminded them of the time and date of the hearing and provided instructions for calling in to the hearing.

10. The January 17, 2024, Prehearing Order instructed the parties as follows:

To participate in the hearing, you must dial the toll-free number listed below. You will be prompted to enter a PIN number, which is also listed below. You will be asked to speak your name, press the # key, and then the telephone system will connect you to the hearing. If you have any witnesses you want to have present during the hearing who are participating from

a separate phone, you must provide them with the telephone number and PIN Number.

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January 17, 2024, Prehearing Order, ¶ 1 (emphasis in the original).

11. The January 17, 2024, Prehearing Order warned in bold type: **“You may lose the case if you do not take part in this hearing and present evidence on the issues raised.”** January 17, 2024, Prehearing Order, ¶ 1 (emphasis in the original).

12. On February 5, 2024, the Complainant submitted via email a written request for a 90-day continuance of the hearing due to recent medical diagnosis.

13. Met-Ed did not object to Mr. Falvey’s request for a continuance of the scheduled hearing.

14. A Corrected Hearing Cancellation/Reschedule Notice was issued on February 12, 2024, informing the parties that the initial call-in telephone hearing was scheduled on May 10, 2024, at 10:00 a.m.

15. The Corrected Hearing Cancellation/Reschedule Notice provided the following instructions:

To participate in the hearing,

- You must dial the toll-free Conference number below
- You must enter the PIN number below when instructed
- You must speak your name when prompted, and press #
- Then, the telephone system will connect you to the hearing

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February 12, 2024, Initial Call-In Hearing Notice, p. 1 (emphasis in the original).

16. The Corrected Hearing Cancellation/Reschedule Notice stated, “You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised.” February 12, 2024, Initial Call-In Hearing Notice, p. 1.

17. On April 10, 2024, a second Prehearing Order was issued directing the parties to comply with various procedural requirements, reminding them of the time and date of the hearing, and providing instructions for calling in to the hearing.

18. The second Prehearing Order instructed the parties as follows:

To participate in the hearing, you must dial the toll-free number listed below. You will be prompted to enter a PIN number, which is also listed below. You will be asked to speak your name, press the # key, and then the telephone system will connect you to the hearing. If you have any witnesses you want to have present during the hearing who are participating from a separate phone, you must provide them with the telephone number and PIN Number.

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April 10, 2024, Prehearing Order, ¶ 1 (emphasis in the original).

19. The second Prehearing Order warned in bold type: “**You may lose the case if you do not take part in this hearing and present evidence on the issues raised.**” April 10, 2024, Prehearing Order, ¶ 1 (emphasis in the original).

20. The two Hearing Notices and the two Prehearing Orders were served electronically upon the Complainant at the email address that he provided to and registered with the Commission.

21. Neither the Hearing Notices nor the Prehearing Orders were returned as undeliverable.

22. The Complainant failed to appear at the May 10, 2024, hearing.

23. On May 10, 2024, Mr. Falvey contacted Met-Ed's paralegal via email stating that "This appointment will be rescheduled as no one contacted me at 10 am as stated and I have prior commitment."

24. Counsel for Met-Ed instructed Mr. Falvey to contact the presiding officer.

25. The Complainant did not request a continuance, withdraw the Complaint, or otherwise notify the Commission to explain why his failure to appear at the May 10, 2024, hearing was unavoidable.

DISCUSSION

In this Complaint, the Complainant alleges that there are incorrect charges on his electricity bills. As relief, the Complaint requests that the Commission look into his bills from Met-Ed and investigate the manyfold increase over the years.

As the party seeking affirmative relief from the Commission, the burden of proof rests on the Complainant. 66 Pa.C.S. § 332(a).

Administrative agencies, like the Public Utility Commission, are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard.

Schneider v. Pa. Pub. Util. Comm'n, 479 A.2d 10 (Pa. Cmwlth. 1984). Notice served to a party with no notification that service failed is presumed received. *Hu v. Metropolitan Edison Co.*, Docket No. C-2019-3012075 (Order entered Dec. 19, 2019) (*Hu*); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Apr. 7, 2017) (*Zirkel*); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 31, 2017) (*Morella*).

As the Commission noted in *Strydio v. PPL Electric Utilities Corp.*, Docket No. C-2017-2633043 at 6 (Opinion and Order entered July 18, 2018), "[o]nce notice of a hearing and the opportunity to be heard have been provided by the Commission, it is the responsibility of the parties to appear and participate in the hearing." (citing, *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered Jan. 24, 2002)); *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993).

In this case, an Initial Call-In Telephone Hearing Notice dated January 8, 2024, notified the parties that an initial call-in telephone hearing was scheduled for February 20, 2024, at 10:00 a.m. The Initial Call-In Telephone Hearing Notice provided the following instructions:

To participate in the hearing,

- You must dial the toll-free Conference number below
- You must enter the PIN number below when instructed
- You must speak your name when prompted, and press #
- Then, the telephone system will connect you to the hearing

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(Emphasis in the original). The Initial Call-In Telephone Hearing Notice also stated, “You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised.”

A Prehearing Order dated January 17, 2024, directed the parties to comply with various procedural requirements, reminded them of the time and date of the hearing, and provided instructions for calling in to the hearing. The January 17, 2024, Prehearing Order instructed the parties as follows:

To participate in the hearing, you must dial the toll-free number listed below. You will be prompted to enter a PIN number, which is also listed below. You will be asked to speak your name, press the # key, and then the telephone system will connect you to the hearing. If you have any witnesses you want to have present during the hearing who are participating from a separate phone, you must provide them with the telephone number and PIN Number.

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January 17, 2024, Prehearing Order, ¶ 1 (emphasis in the original). The January 17, 2024, Prehearing Order also warned in bold type: “**You may lose the case if you do not take part in this hearing and present evidence on the issues raised.**” January 17, 2024, Prehearing Order, ¶ 1 (emphasis in the original).

The January 8, 2024, Hearing Notice and the January 17, 2024, Prehearing Order were electronically served on the Complainant at the email address provided to and registered with the Commission by the Complainant. Neither the January 8, 2024,

Hearing Notice nor the January 17, 2024, Prehearing Order were returned as undeliverable.

On February 5, 2024, the Complainant submitted to me via email a written request for a 90-day continuance of the hearing. As reason for his request, Mr. Falvey cited a recent diagnosis that required medical treatment. On February 7, 2024, I forwarded Mr. Falvey's request to Met-Ed's counsel, Margaret A Morris, Esq., who did not object to Mr. Falvey's request.

By email dated February 12, 2024, I informed the parties that Mr. Falvey's request for continuance was granted and that the February 20, 2024, hearing was cancelled.

A Corrected Hearing Cancellation/Reschedule Notice was also issued on February 12, 2024, informing the parties that the initial call-in telephone hearing was scheduled on May 10, 2024, at 10:00 a.m. The Corrected Hearing Cancellation/Reschedule Notice provided the following instructions:

To participate in the hearing,

- You must dial the toll-free Conference number below
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(Emphasis in the original). The Corrected Hearing Cancellation/Reschedule Notice also stated, "You may lose the case if you do not take part in this hearing and present evidence

on the issue(s) raised.” In addition, on April 10, 2024, a second Prehearing Order was issued directing the parties to comply with various procedural requirements, reminding them of the time and date of the hearing, and providing instructions for calling in to the hearing. Like the first Prehearing Order dated January 17, 2024, the second Prehearing Order instructed the parties as follows:

To participate in the hearing, you must dial the toll-free number listed below. You will be prompted to enter a PIN number, which is also listed below. You will be asked to speak your name, press the # key, and then the telephone system will connect you to the hearing. If you have any witnesses you want to have present during the hearing who are participating from a separate phone, you must provide them with the telephone number and PIN Number.

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Second Prehearing Order, ¶ 1 (emphasis in the original). The second Prehearing Order also warned in bold type: “**You may lose the case if you do not take part in this hearing and present evidence on the issues raised.**” Second Prehearing Order, ¶ 1 (emphasis in the original).

The Corrected Hearing Cancellation/Reschedule Notice as well as the second Prehearing Order were electronically served upon the Complainant at the email address he provided to and registered with the Commission. Neither the Corrected Hearing Cancellation/Reschedule Notice nor the second Prehearing Order were returned as undeliverable

Complainant failed to appear at the May 10, 2024, hearing. Instead, a few hours after the hearing, counsel for Met-Ed informed me that Mr. Falvey had contacted her paralegal via email, stating that “This appointment will be rescheduled as no one

contacted me at 10 am as stated and I have prior commitment.” Counsel instructed Mr. Falvey to contact the presiding officer. To date, there has been no contact or communication from Mr. Falvey with me or anyone else at the Commission regarding his failure to appear at the May 10, 2024, hearing.

Because the Corrected Hearing Cancellation/Reschedule Notice and the second Prehearing Order were electronically served upon the Complainant at the email address he provided to the Commission and were not returned as undeliverable they are presumed to have been received by Mr. Falvey.³ *See, Hu, Zerkel, Morella.*

Having received the Corrected Hearing Cancellation/Reschedule Notice and the Second Prehearing Order, both of which display prominently the instructions for dialing in to the hearing, I find the statement made by the Complainant to MetEd, that he was waiting for a call to join the hearing, to be an unreasonable explanation for his failure to appear at the hearing. For these reasons, I can only conclude that the Complainant’s failure to appear at the further hearing was not unavoidable.

Both the Public Utility Code and the Commission’s regulations provide that, after being notified, a party who fails to appear at a scheduled hearing shall be deemed to have waived the opportunity to participate in the hearing and shall not be permitted to later reopen the matter or be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a). Thus, the Complainant has waived the opportunity to participate in the hearing by failing to appear. 66 Pa.C.S. § 332(f); 52 Pa.

³ Additionally, Mr. Falvey’s communication with the Met-Ed paralegal following the hearing on May 10, 2024, indicates that the Complainant had received the electronic mail and had notice of the hearing. Moreover, Mr. Falvey’s request for a continuance of the original hearing date indicates that he not only received the Hearing Notice and Prehearing Order for the original hearing as well, but in fact, he understood the process to properly request a continuance pursuant to the directions described in both the Hearing Notice and the Prehearing Order.

Code § 5.245(a); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995).

Additionally, Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of any request for relief. By failing to appear and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden. Consequently, the Complaint will be dismissed on this basis as well. *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995); *El-Ayazra v. W. Penn Power Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa. Code § 5.245.

Finally, the party who failed to appear at the hearing has the burden of explaining why her failure to appear was unavoidable. 66 Pa.C.S. § 332(a); *Herr v. West Penn Power Co.*, Docket No. C-2021-3028202 (Opinion and Order entered Sept. 15, 2022). When there are no facts in the record that the party's failure to appear was unavoidable, the complaint should be dismissed. *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F-2021-3027107 (Opinion and Order entered Feb. 7, 2022); *Williams v. PECO Energy Co.*, Docket No. C-2018-3000734 (Opinion and Order entered Mar. 14, 2019); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a). There are no facts on the record that suggest that Complainant's failure to appear was unavoidable. Therefore, the Complaint will be dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa.C.S. § 701.

2. The Complainant received notice of the hearing. *Hu v. UGI Energy Co.*, Docket No. C-2019-3012075 (Order entered Dec. 19, 2019); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Apr. 7, 2017); *Morella v. UGI Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 31, 2017).

3. The due process rights of the Complainant have been fully protected in this proceeding and Complainant's failure to appear was not unavoidable. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984); 52 Pa. Code § 5.245(a).

4. As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proof. 66 Pa.C.S. § 332(a).

5. The Complainant did not participate in the hearing, failed to appear for the hearing, did not present any evidence and, therefore, failed to meet the Complainant's burden of proving eligibility for the relief sought from the Commission. 66 Pa.C.S. § 332(a).

6. If there are no facts in the record that a party's failure to appear at a hearing was unavoidable, the complaint should be dismissed. *Brown v. UGI Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F-2021-3027107 (Opinion and Order entered Feb. 7, 2022); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

