

OFFICIAL FILE
ILLINOIS COMMERCE COMMISSION

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ORIGINAL
ILLINOIS COMMERCE COMMISSION
2005 NOV 14 A 11:00

Rocky Pompilio :
: CHIEF CLERK'S OFFICE
-vs- : 05-0707
: :
Commonwealth Edison Company :
: :
Complaint as to billing/charges :
in Lombard, Illinois. :

MOTION TO DISMISS

Now comes the Respondent, COMMONWEALTH EDISON COMPANY, by and through its attorney, MARK L. GOLDSTEIN, and moves the Administrative Law Judge ("ALJ") and the Illinois Commerce Commission ("Commission") to dismiss the captioned complaint filed by the Complainant, ROCKY POMPILIO.

BACKGROUND

Complainant contends that in 1999, he moved to 1125 S. Main Street from 1119 S. Main Street (Lombard, IL) and that he received a ComEd bill for \$3,000.00 for what he contends is for only three weeks of electric service. Thus, he contends that he was overcharged.

ARGUMENT

COMPLAINANT'S CLAIM IS BARRED BY THE STATUTE OF LIMITATIONS.

Section 9-252 of the Illinois Public Utilities Act ("PUA") (220 ILCS 5/9-252) reads, in relevant part, as follows:

All complaints for the recovery of damages shall be filed with the Commission within 2 years from the time the produce, commodity or service as to which complaint is made was furnished or performed.

Section 9-252.1 of the PUA (220 ILCS 5/9-252.1) goes on to state, in relevant part, as follows:

Any complaint relating to an incorrect billing must be filed with the Commission no more than 2 years after the date the customer first has knowledge of the incorrect billing.

Complainant has acknowledged on the face of his complaint that he was aware of the \$3,000.00 electric bill in 1999. As set forth in the attached Affidavit of John Parise, Jr., the Complainant knew about any alleged incorrect billing in 1999. This action was brought approximately six years later.

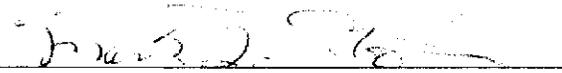
Under these circumstances, the Complainant's claim is barred by the statute of limitations and the complaint should be dismissed.

CONCLUSION

Based upon all of the foregoing, COMMONWEALTH EDISON COMPANY respectfully requests the following:

- 1) the Complainant be required to answer this Motion to Dismiss.
- 2) the complaint filed by ROCKY POMPILIO against COMMONWEALTH EDISON COMPANY be dismissed with prejudice.

Respectfully submitted,
COMMONWEALTH EDISON COMPANY

By: 
Mark L. Goldstein, Its Attorney

MARK L. GOLDSTEIN
MARK L. GOLDSTEIN, P.C.
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108 Wilmot Road, Suite 330
Deerfield, IL 60015
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STATE OF ILLINOIS

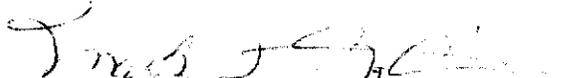
ILLINOIS COMMERCE COMMISSION

Rocky Pompilio)
)
 -vs-) 05-0611
)
 Commonwealth Edison Company,)
)
 Complaint as to billing/charges)
 in Lombard, Illinois.)

NOTICE OF FILING

TO: Parties on Certificate of Service

PLEASE TAKE NOTICE that on November 11, 2005, I filed with the Chief Clerk of the Illinois Commerce Commission a copy of the Respondent's Motion to Dismiss With Prejudice, attached hereto, a copy of which is hereby served upon you.



Mark L. Goldstein, Attorney for Respondent
108 Wilmot Road, Suite 330
Deerfield, IL 60015
(847) 580-5480

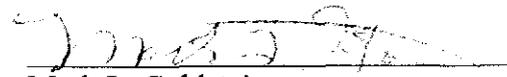
CERTIFICATE OF SERVICE

I hereby certify that on November 11, 2005, I served the Respondent's Motion to Dismiss With Prejudice, by causing copies thereof to be placed in the U.S. Mail, first class postage affixed, addressed to each of the parties indicated below:

Ms. Elizabeth A. Rolando
Chief Clerk.
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701

Mr. David Gilbert
Administrative Law Judge
Illinois Commerce Commission
160 N. LaSalle St., Ste. C-800
Chicago, IL 60601

Mr. Rocky Pompilio
1125 S. Main St., Ste. K
Lombard, IL 60148-3900


Mark L. Goldstein