STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

MALIBU CONDOMINIUM ASSOCIATION,	)	
Petitioner,	)	
v.	)	Docket No. 08-0401
COMMONWEALTH EDISON COMPANY,	)	
Respondent.	)	

COMED'S COMMENTS TO THE ALJ'S RULING OF AUGUST 13, 2009

Respondent, Commonwealth Edison Company, an Illinois corporation ("ComEd"), by its attorneys, hereby submits its Comments To The ALJ's Ruling of August 13, 2009 ("August 13, 2009 Ruling"), and states as follows:

I. BACKGROUND

On August 13, 2009, the ALJ issued a Ruling proposing additional language to the Interim Order of June 24, 2009 ("Interim Order") on the issue of whether the filing of an informal complaint pursuant to 83 Ill. Admin. Code 200.160 tolled the statues of limitation under 220 ILCS 5/9-252 ("§ 9-252") and 220 ILCS 5/9-252.1 ("§ 9-252.1") of the Illinois Public Utilities Act ("PUA"). The ALJ issued the August 13, 2009 Ruling in response to the Notice of Commission Action of August 6, 2009, which granted Petitioner's Application for Rehearing solely on the issue of whether the Interim Order of June 24, 2009 offered sufficient analysis for its ruling that the filing of an informal complaint did not toll the statutes of limitation under § 9-252 or § 9-252.1.

On August 17, 2009, Petitioner Malibu Condominium Association ("Malibu") filed its Comments and Exceptions to the ALJ's proposed additional language. In its

Comments and Exceptions, Malibu argues, *inter alia*, that unless informal complaints toll the statute of limitation, a utility customer is at risk from a public utility's bad faith delay in responding to an informal complaint.

II. COMED'S COMMENTS IN SUPPORT OF ALJ'S PROPOSED LANGUAGE

ComEd agrees with the ALJ's proposed additional language supporting the Commission's conclusion that the filing of an informal complaint does not toll the statutes of limitation under § 9-252 or § 9-252.1. In support of the ALJ's proposed additional language, ComEd offers the following comments:

A. The Language of 220 ILCS 5/10-108 ("§ 10-108") Precludes Tolling The Statute Of Limitation Based On The Filing Of An Informal Complaint.

§ 10-108 of the PUA outlines the complaint process before the Illinois Commerce Commission ("ICC" or "Commission"), and with respect to reparations cases filed under Article IX of the PUA, provides that "the Commission shall make and render findings concerning the subject matter and facts complained of and enter its order based thereon **not later than one year after filing of such complaint** unless all parties to the complaint proceeding under Article IX agree to a period greater than 1 year …." (emphasis added). In other words, under the PUA, complaints **require** formal commission action within 1 year of filing unless the parties agree otherwise.

By contrast, 83 Ill. Admin. Code 200.160, which authorizes the filing of informal complaints, provides in relevant part "[s]uch complaints will not be docketed and will not initiate a formal proceeding. The Commission acting through its staff will investigate and attempt to resolve informal complaints **without formal action**." (emphasis added).

Thus, 83 Ill. Admin. Code 200.160 **precludes** the formal commission action for informal complaints required for complaints filed under § 10-108.

A tolling of the statute of limitation for informal complaints cannot be reconciled with the requirement under § 10-108 that the Commission take formal action within 1 year. In this case for example, Malibu filed its informal complaint on October 25, 2007, and its formal complaint almost 8 months later on June 24, 2008. According to Malibu, an informal complaint should toll the statute of limitation, regardless of how long a petitioner delays in filing its formal complaint. Thus, the Commission's time for issuing its order in a case would be reduced by the period between the filing of the initial complaint and the formal complaint. In this case, the Commission would have been forced to issue its order by October 25, 2008 - 4 months after Malibu filed its formal complaint. For cases in which the formal complaint is filed one year or more after the informal complaint, it would be impossible for the Commission to comply with the 1 year requirement without the agreement of the parties.

Nothing in the PUA states or suggests that the Illinois Legislature intended for the Commission's time for resolving reparations cases to be restricted in such an illogical and impractical way. Informal complaints as authorized by 83 Ill. Admin. Code 200.160 are plainly not within the scope of "complaints" as discussed in the PUA. ComEd therefore agrees with the ALJ's proposed language for the Interim Order.

B. Because Of The Time Limits Under 83 Ill. Admin. Code 280.170 For Resolving Informal Complaints, Customers Face No Risk From Utilities Failing To Respond Timely.

In its Comments and Exceptions, Malibu asserts that by not tolling the statute of limitation upon filing the informal complaint, "[t]he utility would have absolutely no

incentive to participate in good faith in the informal complaint process, since the utility can simply delay and dawdle in the expectation that the complainant, who believes the informal complaint process is "real" will unknowingly find that the time for filing a formal complaint has past." Malibu's Comments and Exceptions, pp. 2-3.

Malibu fails to note that 83 Ill. Admin. Code 280.170(c) and (d) explicitly limit the duration of the informal complaint process. 83 Ill. Admin. Code 280.170(c) provides in part that a public utility has 14 days to respond to an informal complaint and the Commission has 14 days thereafter to "advise the parties of the results of the investigation." In other words, the informal complaint process is to be completed with 28 days unless the parties agree to extend the deadlines. Moreover, if either the Commission fails to resolve the dispute to the parties' satisfaction or the public utility fails to respond within 14 days after the informal complaint is filed, the customer may file a formal complaint before the Commission. *See* 83 Ill. Admin. Code 280.170(d).

The express time limits for resolving informal complaints under 83 Ill. Admin. Code 280.170 disprove entirely Malibu's claim that without tolling, a utility customer is at risk from a public utility's bad faith delay in responding to an informal complaint.

III. CONCLUSION

The language of the PUA, as a whole, outlines the complaint process, requires that complaints for reparations be filed within 2 years, and further requires that the Commission take formal action on the complaint within 1 year. There is no plausible reading of the PUA that can reconcile these requirements with Malibu's claim that the filing of an informal complaint tolls the statute of limitation. Moreover, nothing in the PUA or the Illinois Administrative Code states or suggests that the statute of limitation be

tolled upon filing an informal complaint. Absent such an explicit provision, Malibu's position on this issue must therefore be rejected.

Respectfully submitted,
Commonwealth Edison Company

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