

Qi Ji Liu)
-vs-) **12-0374**
Commonwealth Edison Company)
)
Complaint as to billing/charges)
in Chicago, Illinois.)

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CHIEF CLERK'S OFFICE

RESPONDENT'S MOTION TO DISMISS

Commonwealth Edison Company ("ComEd") by its counsel, Mark L. Goldstein, moves to dismiss the Complaint filed by Qi Ji Liu ("Complainant"), pursuant to 83 Ill. Adm. Code 200.90 and 200.190, and Sections 735 ILCS 5/2-615 and 5/2-619 of the Illinois Code of Civil Procedure, (735 ILCS 5/2-615, 735 ILCS 5/2-619). In support of this Motion, ComEd states:

Background

On June 4, 2012, Complainant filed a Formal Complaint alleging, among other things, incorrect billing by ComEd. The Complaint is as to service at 2913 South Union Avenue, Chicago, Illinois ("Property").

According to ComEd records, Complainant has had two accounts for service at the Property, specifically for unit 1FB. In May 2009, an account was opened in Mr. Liu's name for service at the property; ComEd Account number 90751-13084 ("Old Account"). In August 2010, ComEd was notified that a new tenant was moving into the Property and into Unit 1FB, so it closed Complainant's account. In October 2010, ComEd was notified that the Complainant still occupied the Property, so it opened a new account in his name; ComEd Account 90751-13100 ("New Account").

Due to the confusion with the billing accounts, it appears Complainant made three payments to his Old Account rather using the new account number. ComEd transferred those payments to the New Account and properly credited the account.

The total balance due on the New Account as of the date of this filing is \$197.59. Complainant has refused to settle with the ComEd.

Legal Standard

As outlined in Illinois Administrative Code Rules of Practice section 200.190(a) and Section 5/2-615 and 5/2-619 of Illinois Code of Civil Procedure, a party may file a motion to dismiss. In order for a complaint to survive a Motion to Dismiss it, must allege facts to support essential elements of cause of action. *Gore v Indiana Ins. Co.*, 376 Ill. App3d 282, 285 (1st Dist. 2007).

The Commission must take all reasonable inferences from well-pled facts as true, disregard all conclusory allegations, and construe the evidence strictly against the movant. *Parkway Bank and Trust Co. v. Meseljevic*, 406 Ill.App.3d 435, 442 (1st Dist.) (2010). A complainant cannot rely on conclusions of fact or law unsupported by factual allegations. *Gore v Indiana Ins. Co.*, 376 Ill. App3d 282, 285 (1st Dist. 2007). Because Illinois is a fact pleading jurisdiction, a complainant must allege facts sufficient to bring its claim within the scope of the cause of action asserted. *Turner v. Memorial Medical Center*, 233 Ill.2d 494 (2009).

Argument

The Complaint fails on its face. Complainant does not, and cannot, allege that ComEd violated its obligations under its tariff or the Public Utilities Act, and the

Complainant provides no facts to support the allegation that ComEd failed to fulfill some duty.

The Complaint is not properly pled, states no cause of action, and only generally alludes to some sort of wrong doing on the part of ComEd. There are no well-pled facts. Indeed the "Facts" section of the Complaint focuses on a range of allegations, none of which are supported by actual facts. Instead, these "facts" are actually conclusions claiming "problems will always result in overcharging or double-billing customer." Yet, nowhere is it properly alleged or factually supported that ComEd overcharged or double-billed the Complainant.

Further, Complainant misconstrues and distorts any response it has received from ComEd regarding the allegations in the Complaint. For example, Complainant alludes to a written response he received from ComEd which stated that it had issued a refund check. This is simply false. The letter, attached hereto as Attachment 1, clearly outlines the billing issues with the Complainant's account and details that "the refund checks issued for the payments above have been cancelled..." (emphasis added).

As to the relief requested, ComEd cannot simply assign or re-assign billing account numbers at the request of the customer. Each account number is established as a record of customer activity. Once that account is closed, it remains closed and a new account number is assigned. Therefore, paragraphs 1-2 are impossible for this Commission to grant. ComEd is unclear as to the request detailed in paragraph 3, but currently Complainant is being billed for service at the Property, Unit 1FB, as described above. The billing that ComEd provides each month reflects the accurate dollar amount

for Complainant's account. Next, ComEd apologized to the Complainant at the first status hearing held on August 28, 2012.

Finally, Complainant request an "injunctive order" however he has not plead any of the elements for injunctive relief nor is that type of relief available at the Commission.

For the above reasons, Commonwealth Edison Company respectfully requests that the Commission grant its Motion to Dismiss with Prejudice and dismiss the Formal Complaint filed by Qi Ji Liu on June 4, 2012.

Respectfully submitted,
Commonwealth Edison Company

By: 
Mark L. Goldstein, Its Attorney

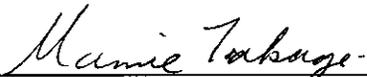
Mark L. Goldstein
Attorney for Respondent
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Mundelein, IL 60060
(847) 949-1340

VERIFICATION

I, Erin Buechler, being first duly sworn on oath, states that I am a Senior Regulatory Specialist for Commonwealth Edison Company, and I have read the foregoing Verified Reply of Commonwealth Edison Company to Verified Motion to Dismiss, know the contents thereof, and that same are true and correct to the best of my information and belief.


Erin Buechler

Subscribed and Sworn to before me
this 28 day of September, 2012.


Notary Public



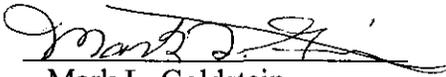
CERTIFICATE OF SERVICE

I certify that on October 1, 2012, I served the foregoing Respondent's Motion to Dismiss by causing a copy of same 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. Qi Ji Liu
2913 S. Union Ave.
Chicago, IL 60616

Ms. Heather Jorgenson
Administrative Law Judge
Illinois Commerce Commission
160 N. LaSalle St., Ste. C-800
Chicago, IL 60601


Mark L. Goldstein