

ORIGINAL

OFFICIAL FILE
ILLINOIS COMMERCE COMMISSION

ILLINOIS COMMERCE
COMMISSION

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION NOV -5 P 2: 29

Qi Ji Liu)
-vs-) 12-0374 CHIEF CLERK'S OFFICE
Commonwealth Edison Company)
)
Complaint as to billing/charges)
in Chicago, Illinois.)

**COMMONWEALTH EDISON COMPANY'S REPLY TO COMPLAINANT'S
OPPOSITION TO A MOTION TO DISMISS**

Now comes the Respondent, Commonwealth Edison Company ("ComEd"), by its attorney, Mark L. Goldstein, and files its Reply to Complainant's Opposition to a Motion to Dismiss filed by the Complainant, Qi Ji Liu (Complainant" or "Liu")..

On October 3, 2012, ComEd filed its Motion to Dismiss in response to Liu's Complaint which it believes is insufficient and thus unanswerable by way of anything other than a Motion to Dismiss. Subsequently, on November 1, 2012, Complainant filed his Opposition or Response to ComEd's Motion ("Opposition").

As with the original Complaint, Liu's Opposition continues to misconstrue and distort any response received from ComEd. Instead of addressing the issues raised in the Motion, he muddies the waters with more legal conclusions and unsupported allegations.

ComEd will not take the valuable time and resources of the Commission to respond to each numbered paragraph contained in Complainant's Opposition, but instead will stand by Illinois law and the arguments contained in its Motion for its Reply.

Simply stated the Complaint fails on its face. Under Illinois law, a Section 2-615 motion to dismiss challenges the legal sufficiency of a complaint based on defects apparent on its face. 735 ILCS 5/2-615; *Compton v. Country Mut. Ins. Co.*, 887 N.E.2d 878, 882 (1st

Dist. 2008). In order to be legally sufficient, the Public Utilities Act requires that the complaint be based on “things done or omitted to be done in violation, or claimed to be in violation of, any provision of [the Public Utilities] Act, or any order or rule of the Commission.” 220 ILCS 5/10-108. Section 200.100 of the Commission’s Rules of Practice plainly requires that the relief requested shall include “the statutory authority or rule or regulation upon which such relief is sought.” 83 Ill. Admin. Code 200.100.

Complainant does not, and cannot, allege that ComEd violated its obligations under its tariff or the Public Utilities Act, and Complaint provides no facts to support the allegation that ComEd failed to fulfill some duty. For this reason, ComEd asks that the Complaint be dismissed, ComEd is not, however, asking for any type of summary judgment as alleged in Complainant’s Opposition.

While ComEd has no doubt that Liu feels wronged, mistreated, and denied some form of closure from ComEd, this is simply not the case. ComEd representatives have explained the billing of Complainant’s account both during the informal complaint process and now; ComEd representatives have made Complainant whole by transferring payments made to an old, closed account to his current, open account; ComEd representatives have attempted to reach an amicable resolution with the Complainant but have been met with the same unsupported allegations and conclusions found in the Complaint and Opposition. ComEd will respond to any and all discovery requests it receives, but as of the date of this filing, no such requests have been made to counsel for ComEd. But the crux of this Reply and the reason for its Motion is that this cannot continue without Complainant alleging and supporting with fact some legal obligation which ComEd has violated.

For these reasons and for those previously stated in its Motion to Dismiss, Commonwealth Edison Company respectfully request 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
3019 Province Circle
Mundelein, IL 60060
(847) 949-1340

CERTIFICATE OF SERVICE

I certify that on November 2, 2012, I served the foregoing Respondent's Motion 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