

Qi Ji Liu,)
vs)
Commonwealth Edison Company) No: 12-0374
Complaint as to billing/charges in Chicago) Hon. Heather Jorgenson

2014 MAR 17 A 10:58

CHIEF CLERK'S OFFICE

COMPLAINANT'S BRIEFS ON EXCEPTIONS

Pursuant to Ill. Admn. Code Section 200. 830, Complainant Qi Ji Liu hereby respectfully submits his Briefs on Exceptions to the Proposed Order of the Administrative Judge Heather Jorgenson ("ALJ"). As ground for the pleading, the Complainant states as follows:

INTRODUCTION

The Proposed Order (the "Order") did not make certain findings of the fact that are necessary upon which to base a reasoned Commission Order. The Order did not address several of the important procedural and sustentative issues in this case; and the Order did not address Complainant's key arguments in this case; and the Order did not make certain factual findings to support its conclusions. Furthermore, several aspects of the Order are unclear and do not seem to be based on solid legal ground and sufficient factual findings.

The Commission should grant these exceptions and fully evaluate and address Complainant's important issues and key arguments presented here and in all his pleadings and filings. Furthermore, the Commission should (1) strike or deny

Respondent oral motion to dismiss; (2) strike Respondent's filing dated April 12, 2013; (3) grant Complainant's request for brief discovery; and (4) grant Complainant's request for an evidentiary hearing.

I. Procedural History

1. On June 4, 2012, Complainant filed a verified Complaint with the Illinois Commerce Commission ("Commission") against Commonwealth Edison Company ("ComEd" or "Respondent"). Respondent filed a verified Motion to Dismiss on October 3, 2012. On April 10, 2013 the Commission denied Respondent's Motion to Dismiss.
2. Respondent did not file and refused to file an Answer defined by 83 ILL. Admn. Code 200. 180 (a) and 735 ILCS 5/2-610 in response to the Complaint even as of this day.
3. The above paragraph reflects a material fact; and it should be included in the Final Order.
4. At the status hearing on April 10, 2013, Respondent made an oral motion to dismiss the proceedings.
5. The term of "status hearing" and the date of this hearing should be included in the Final Order from the Commission, as there are stark differences between status hearings, settlement conference and evidentiary hearing; and the date and timing are important in observation of Illinois Civil Procedure and Illinois Administrative Codes.

II. Complainant's Position

6. In the Complaint, allegations against Respondent have been made, including violation of 220 ILCS 5/8-101 et seq.; 220 ILCS 5/5-101 et seq.; 85 ILL Admn. Code 280.160; and 815 ILCS 505/2 et seq. See Formal Complaint at page 1; Request for Admission dated November 9, 2012, 2012 at ¶ 6; ¶¶8-9; ¶ 12; ¶ 15; Opposition to Dismiss filed on November 1, 2012; at ¶ 17; and Complainant's Reply filed on May 6, 2013 at ¶28.
7. The above paragraph should be included in the Final Order, as it is on the record; and it reflects more precisely what Complainant's allegations are.
8. During the proceedings in this case, Complainant alleged Respondent and its attorney Mr. Mark L. Goldstein ("Mr. Goldstein") violate Illinois Supreme Court Rule 137 ("Rule 137") and commit fraud upon tribunal. See Complainant's Opposition to Dismiss filed on November 1, 2012 at ¶ 16; Complainant's Motion to Strike dated April 19, 2013 at ¶¶ 19-21; ¶¶28-29 and Reply dated May 6, 2013 at ¶ 4; ¶12; ¶¶ 15-16; ¶¶28-29 ¶¶ 19-21,.
9. The above paragraph should be included in the Final Order, as these allegations raise serious issues on statement of law and material facts.
10. As stated in Complainant's Opposition to Dismiss dated October 29, 2012, at ¶ 6, it is well established, in Illinois and in all other jurisdictions, when a motion to dismiss is evaluated, as long as a party fails to file an Answer, all charges and factual allegation in a complaint and all related filings must be taken as true and all factual inferences must be drawn in Complainant's favor. See e. g. Urbaitis

v. Commonwealth Edison, 143 Ill. 2d 458, 575 N.E. 2d 548 (1991).

11. Complainant requests that the Commission grant the following relief:

- (1) Order ComEd to establish the account number 8830614016 as the only one for billing and the only one on its customer record for Complainant immediately;
- (2) Order ComEd to close, cancel and delete account numbers 9075113084 and 9075113100 from the account immediately;
- (3) Order ComEd to use 2913 S Union Ave or 2913 S Union Ave 1FL, Chicago IL 60616 as the only billing address and the address on its record for Complainant's account, the addresses of 3121 S. Lowe, or 2913 S Union 1FB should definitely NOT be used,
- (4) Order ComEd to submit a up-to-date and clean bill of an accurate dollar amount for Complainant's account,
- (5) Order ComEd to submit a written apology for all its nonsensical and deliberate fraudulent statements provided in the time period of more than one-and-half year,

And, Complainant respectfully prays the Commission to issue an injunctive order and grant any other relief which deem just and proper.

12. The last sentence of the above paragraph should be included in the Final Order, as it is on the record in the Formal Complaint, and it is an important part of the relief Complainant is seeking for.

13. Complainant asserts Respondent was in default on and before April 10, 2013.

See Complainant's Motion to Strike filed on April 19, 2013 at ¶¶ 1-3.

14. The above paragraph should be included in the Final Order.

III Respondent's Position

15. The language in this section of the Order is vague and ambiguous, to say the very least; and the conclusion of facts therein are in stark contradiction with the statements of fact contained in Complainant's pleading and filings. As such, following substitutions, modifications are respectfully submitted:

16. In the Motion to Dismiss filed on October 3, 2012 at page 2, in the Legal Standard section, Respondent states: "The Commission must take all reasonable inference 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). Therefore, Respondent is not in a position to offer anything which is in contradiction with Complainant's statement of facts.

17. 735 Ill. 5/2-602 states, in part, "[T]he first pleading by the defendant shall be designated an answer." The record shows: ComEd did not file an Answer even as of this day. As such, without a single pleading, the Respondent is not in a proper standing to offer any conclusion of fact or statement of facts either at an evidentiary hearing, or at a status one.

18. Complainant alleged ComEd and its attorney violated Rule 137 and committed fraud upon a tribunal. Any and all well-pled related facts have to be taken as

true at this stage. As such, Respondent has a legal obligation to withdraw all its deliberate false statements in law and in material facts.

19. For example, at August 28, 2012, status hearing, Respondent's attorney Mr. Mark L. Goldstein argued that Complainant's claims were barred by a two-year "Statute of Limitation." This a deliberate false statement of law, which he never withdraw, and further, he has no intention to do so even as of this day.
20. For example, as stated in Complainant's Reply filed on May 6, 2013 at ¶ 20, the account number 9075113084 is active, as always, for receiving monthly payment. This simple material fact will defeat all deliberate false statements from Respondent and its attorney Mr. Mark L. Goldstein. Therefore, ComEd and Mr. Goldstein do have a legal obligation to withdraw all the deliberate false conclusions of facts or false statements of fact, including those listed in Section III Respondent's Position of the Order. Also they do have the legal obligation to submit the Account Activity for the account number 9075113084.
21. Complainant suggests that this entire Section should be modified or rewritten in the Final Order after a brief discovery and/or after an evidentiary hearing, in case when the Commission concludes Respondent is still in good standing at the present moment.

IV Argument

22. Complainant asserts Respondent was in default before, on and after April 10, 2013. See Complainant's Motion to Strike filed on April 15, 2013 at ¶¶ 1-3. When a party's legal standing is in dispute, this important issue should be

addressed first. In this respect, the Order failed. As such, it should be modified or rewritten.

23. Beyond argument, since Respondent's Motion to Dismiss was denied on March 12, 2013, the decision from the Commission indicates, as 83 ILL. Admn. Code states, "the Hearing Examiner issues a ruling that the complainant provides a clear statement on the subject matter, scope of the complaint, and basis thereof, ***" Respondent has the legal obligation to file an Answer within 21 days. In this respect, Respondent failed. See 83 ILL. Admn. Code 200. 180 (a).

24. It is necessary to point out, Respondent and its attorney Mr. Mark L Goldstein provide deliberate false statements in this case from start, even in a verified Motion to Dismiss, which was signed by Mr. Goldstein and Erin Buechler. For example, among others, ComEd wrote: "The refund check issued for the payments above have been cancelled ..." (emphasis added." See Respondent's Motion to Dismiss in paragraph 3 at page 3, dated September 28, 2012. Here, with a single sentence Respondent and Mr. Goldstein are capable to create and submit two fraudulent statements: In reality, as they knew very well, not a single refund check was issued and Respondent had no way to cancel something of no existence. As such, conclusion can be made that ComEd and Mr. Goldstein were determined to delay the process, and block any discovery from the start, no matter how brief and simple it would be.

25. On April 26, 2013, Respondent raised an important procedural issue in dispute by arguing that it is the ALJ's responsibility to notice ComEd, by an order, that

an Answer shall be filed. See Respondent Response to Motion to Strike at ¶¶ 2-3. The Order fails to address this essential issue. As such, it should be clarified or modified.

26. As stated at ¶ 4 in Complainant's Reply on May 6, 2013, no jurisdiction permits recycling a denied motion. And no judge would allow a party to submit an "oral" motion just after a written one is denied. The Order fails to address this important issue. As such, it should be modified or rewritten. When different rulings were rendered on a motion to dismiss, ordinary person might ask what happened; and what made a difference. Respondent and its attorney intent to bring our regulatory system, judicial system and legal profession into disparate. Even for this reason only, Respondent's groundless oral motion should be stricken or denied.

27. The design of the standard form for Formal Complaint indicates the Commission has the authority to enter a legal judgment whenever a public utility firm violates "the law, Commission rule(s) or utility tariffs." And the Order at page 3 correctly asserts "the Commission has subject matter jurisdiction and jurisdiction over the parties." But on the same page of the Order, it states: Complainant's "additional claims regarding violations of the Illinois Consumer Fraud and Deceptive Business Practices Act cannot be brought before the Commission." The language of this sentence is vague and ambiguous. And, as the Formal Complaint shows, allegation of violating 815 ILCS 505/2 et seq. has already been included therein, As such, the Order should be modified to

clarify and elaborate this important issue.

28. Further, the Order, on the face of the text, did not address Complainant's allegations under 220 ILCS 5/8-101 et seq.; 220 ILCS 5/5-101 et seq.; and 85 ILL Admn. Code 280.160. These important issues should be considered in the Final Order as well.

29. Also, during the proceedings in this case, Complainant alleged, with statements of fact in support, Respondent and its attorney Mr. Mark L. Goldstein violate Illinois Supreme Court Rule 137, and commit fraud upon a tribunal. The Order, on the face of text, did not address these serious issues. Ruling on these issues should be included in the Final Order.

30. An order procured by fraud shall be void. See *Evans v. Corporate Service* 207 Ill. App. 3d 197, 301 (1990). Applying the same reasoning, we can say an order procured by improper means should be void as well. By their misconducts, Respondent and its attorney Mr. Goldstein have always been trying to waste the precious time and resources for all parties and the Commission. As such they should be sanctioned. It is important to note that, for the purpose to evaluate a motion to dismiss, Complainant's position and all the statements of fact in Complainant's Requests for Admissions dated Nov. 6, 2012 have to be taken as true also. See ¶¶ 1-15 in Request for Admissions dated Nov. 9, 2012. By applying the evaluation standard for a motion to dismiss, Section III Respondent's Position in the Order should be modified as to all conclusions of law, conclusions of fact or statements of fact therein.

31. For example, at ¶2 in the Requests for Admission, Complainant states:

“ComEd has no legitimate reason to assign a new account number 9075113100 for Complainant in 2010;” at ¶3, Complainant asserts: “For more than four years Complainant has been lived at the present address 2913 S. Union Chicago, IL 60616. Complainant had neither called ComEd on August 16, 2010, nor had he moved from the above-mentioned location.” And at ¶ 7, Complainant states: “The account number 9075113084 is not closed, as ComEd continued using it to receive and transfer payments from February of 2011 to this day.” These statements are in consistence with those contained in the Formal Complaint. See ¶¶ 3-4 in Facts Section, Attachment to the Formal Complaint. As such, all the conclusion of law, conclusion of fact, or statements of fact, if any, in the Respondent’s Position Section of the Order have to be put aside at the present time; and the Order should be modified.

32. Even though the Order correctly acknowledges “Complainant states that ComEd created and assigned three different account numbers (8830614016, 907513100, and 9075113084 ***,” but it did not elaborate why these three account numbers were assigned, kept and maintained for one consumer who lives in one apartment, using one electric meter; and the Order did not inquire what the account activities are for each of these account numbers. As such, the Order should be modified.

33. It is common knowledge that a utility firm can create an account for a customer only by customer’s request and consent, in this respect, Respondent fails, to

say the very least. In reality, the account number 9075113100 was illegally created for the purpose to create confusion and overcharge a customer. ComEd and its attorney submit a flood of deliberate false statements on this issue in order to cover up Respondent's wrongdoings. The terms of "new account number", "old account numbers" and "prior account number" Respondent and its attorney Mr. Mark L. Goldstein used are misleading and deceptive. In this case, there are only legitimate and illegitimate account numbers, or, in alternative terms, correct and wrong account numbers . When ComEd was still using account number 8830614016 to collect monthly bill payments and was able to transfer money from it at will, that account is not "old" or "prior" at all. The Order adopted Respondent's terms of "new account number", "old account numbers", and "prior account number." As such, it should be modified.

34. Respondent intends to, through formal proceedings, legalize the illegal act of creating the account number 907513100 for the purpose to create confusion, to double-bill and overcharge a customer in the past and in the future. The Commission should not allow it happen. For this reason, the Order should be modified.
35. It is a statement of fact Complainant repeats again and again that, from June of 2008 to April of 2013, ComEd uses legitimate or correct account number 9075113084 to collect electricity bill payments. See Complainant's Reply filed on May 6, 2013 at ¶ 20; also see Request for Admissions dated Nov 9 2012, at

¶ 3. And Respondent admits ComEd is capable to transfer fund from account 9075113084 to illegally created account 907513100. As such, beyond argument, both accounts are active in ComEd's record. But for about two years in this case, Respondent and its attorney Mr. Mark L. Goldstein, knowingly and willingly, conceal the Account Activity for account number 9075113084 in order to deceive the Commission; ComEd and Mr. Goldstein deceptively contended that account 9075113084 had been closed; also they fraudulently argued that there was only one account left for Complainant. Beyond dispute, such deliberate false statements, from both Respondent and Mr. Goldstein, are an affront to human intelligence, as they already defeated themselves by their own contradictory contentions. Therefore, even for this reason only, both ComEd and Mr. Goldstein should be sanctioned and Respondent's attorney Mr. Goldstein should be disqualified under Rule 137. Therefore, the Order should be modified.

36.83 Ill. Admin. Code 200 340 180 states in part, "[I]ts the policy of the Commission to obtain **full disclosure of all relevant and material facts to a proceeding.**" (Emphasis added). It is noteworthy that Respondent and Mr. Goldstein wrote, ComEd will respond to **any and all** discovery request it receives." (Emphasis added). (See page 2 of its Reply filed on November 5, 2012). But they did not and refused to respond Complainant's discovery requests for Interrogatories and Request for Production even as of this day. The Order did not address the issue of whether or not Respondent had a

legal obligation to respond Interrogatories and Request for Production before April 10, 2013. As such, it should be modified

37. On April 10, 2013, a status hearing was held, it was not a scheduled settlement conference, nor is it a evidentiary hearing.
38. As of April 10, 2013, Respondent did not file an Answer; it did not file a response to Interrogatories; and it did not respond to the Requests for Production. On that day, ComEd's attorney Mr. Mark L. Goldstein refused to file an Answer, also he refused to file a discovery response to Interrogatories and the Requests for Production; but he offered no objection to the discovery request before April 10, 2013.
39. On April 10, 2013, ComEd's attorney Mr. Mark L. Goldstein concealed the illegitimate nature of the account number 907513100; and he avoided or evaded the fact that account numbers 8830614016 and 9075113084 existed.
40. On April 10, 2013, ComEd's attorney Mr. Mark L. Goldstein, knowingly and willingly, concealed the balance for account number 8830614016; and he knowingly and willingly, withheld the document of the account activity for account number 8830614016.
41. On April 10, 2013, at Complainant's surprise, ComEd's attorney Mr. Mark L. Goldstein fraudulently argued Complainant had electric bill unpaid based on some kind of account activity. That is a deliberate false statement.
42. On April 10, 2013, Respondent and Mr. Goldstein had never served the specific document of so-called account activity before April 10, 2013, nor did

they submit it to the Complainant and to the ALJ on that day. Their purpose is to surprise and prejudice Complainant, create confusion, and deceive the ALJ.

43. On April 10, 2013, ComEd and Mr. Goldstein did not offer to delete the illegitimate account 907513100, although they knew the specific account created confusion, and, at a result, double billing and overcharging happened all the time.
44. The truth is as long as the illegitimate account 907513100 was intact, ComEd could still do the same thing in the future. And even as of this day, Respondent still refuses to delete the illegitimate account number 907513100, although Complainant points out it is a wrong number every month. As such, an order from the Commission is necessary in order to avoid future confusion and overcharging, by instructing ComEd to delete account number 907513100 and establish 8830614016 as the sole account number for billing
45. On April 12, 2013, Respondent and Mr. Goldstein again, knowingly and willingly, concealed the illegitimate nature of account 907513100; they again, knowingly and willingly, concealed the existence of an active account 9075113084; and they again, knowingly and willingly, withheld the document of Account Activity for account 9075113084. By doing so, they continued to, knowingly and willingly, to deceive the Commission and the public.
46. Even for the reasons stated above at ¶¶ 37 – 45, Respondent's oral motion should be stricken or denied; Respondent's filing dated April 12, 2013 should be stricken; ComEd and Mr. Mark L Goldstein should be sanctioned;

Mr. Goldstein should be disqualified; and the Order should be modified.

47. In the second paragraph of the Section III Respondent's position, at page 2 of the Order, it stated "At the hearing, ComEd offered, and subsequently did, zero out Mr. Liu's account, which at the time of the hearing amounted to \$383.07."

Here, the dollar amount apparently came from account number 907513100, which was illegally created for double billing and overcharging. That means after multiple corrections in three years, ComEd still intended to do the same thing as usual, i. e. to double-charge and overcharge Complainant in the dollar amount of \$383.07 before April 10, 2013. As such, the Order should be modified to clarify the fact.

48. In the second paragraph of the Section III Respondent's position, at page 2 of the Order, the following essential issues have not been addressed: Whether or not ComEd withheld and concealed the account activity of account 8830614016 and whether or not ComEd, knowingly and willingly, concealed the dollar amounts it had received for Complainant's electric bill payment through account number 8830614016 . As such, the Order should be modified.

49. Complainant's Motion to Deem the Requests for Admission of Facts was served on November 9, 2012, Respondent did not respond within several months. After fifteen months, the ALJ raises an objection on minor defects in technicality as stated in the Order, at page 3, "The Commission further concludes that Complainant's Motion to Deem the Requests for Admission of Facts did not comply with Illinois Supreme Court Rule 216 (g)." Here, Complainant would like

to stress again, for the purpose to evaluate a motion to dismiss, all statements of fact in the specific document have to be taken as true also. And by this Brief, Complainant states, he would like to correct the minor technical error therein with observation of the latest amendment of Rule 216 and serve it again with permission from the Commission.

50. Here, it is important to point out, the ALJ, within fifteen months did not address the issue of whether or not Respondent should comply with Illinois Supreme Court Rule 213 and 214 by responding Interrogatories and Requests for Production before April 10, 2013. This important issue should be addressed. As such, the Order should be modified for clarification.

51. As stated at ¶ 8 in Complainant's Reply dated May 26, 2013, Illinois Supreme Court Rule 219 (c) explicitly provides remedy when a party fails to comply with order or Rules in discovery, including, among others, "That the offending party be debarred from filing any other pleading relating to any issue which the refusal or failure relates." Therefore, if Rule 219 (c) is observed and strictly enforced, even for this reason only, Respondent's contentions at the April 10, 2013 status hearing, and the April 12, 2013 filing should be stricken as a matter of law. As such, the Order should be modified in order to clarify the legal and factual ground.

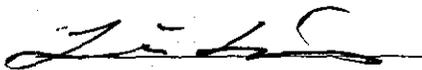
52. Here, as always, Complainant firmly believes he is entitled to have an Answer to his Formal Complaint in this case; and Complainant firmly believes he does have the fundamental right to conduct a brief discovery. Further, Complainant

firmly believes that he does have the fundamental right to present evidence in an evidentiary hearing and in the Final Evidentiary Hearing. Also, Complainant firmly believes all disputes in this simple case should be resolved long, long time ago, if the Respondent and its attorney followed the Illinois Civil Procedure and 83 Illinois Administrative Code from the start.

V. Conclusion

WHEREFORE, and based upon the foregoing, Complainant respectfully requests that the Commission modify the Order to address Complainant's arguments as set forth above that were not addressed by the ALJ, to clarify those portions of the Order that are too vague and ambiguous as written, and to make the requisite findings of fact upon which a proper decision can be rendered. Furthermore, Complainant requests the Commission (1) strike or deny Respondent's oral motion to dismiss; (2) strike Respondent's filing dated April 12, 2013; (3) grant Complainant's request for brief discovery; and (4) grant Complainant's request for an evidentiary hearing.

Respectively submitted



(Complainant's Signature)

March 12, 2014

(Date)

Qi Ji Liu

2913 S. Union Ave. Chicago, IL 60616

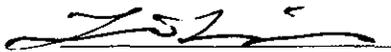
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Illinois Commerce Commission

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Commonwealth Edison Company) No: 12-0374
Complaint as to billing/charges in Chicago) Hon. Heather Jorgenson
)

PROOF OF SERVICE

I, Qi Ji Liu, Complainant, on oath state that I cause an exact copy of the attached **Complainant's Brief on Exceptions**, by mailing such copy to the above-named Respondent's attorney at the address: Mark L. Goldstein, 3019 Province Circle, Mundelein, IL 60060 by depositing such copy thereof with envelope bearing sufficient pre-paid postage in the United State Mail.



(Complainant's Signature)

March 13, 2014

(Date)

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cc and the Complainant's Brief on Exceptions to:

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