STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Maher Jarad	:	
-vs-	:	
Commonwealth Edison Company	:	**15-0200**
	:	
Complaint as to billing/charges in	:	
Park Ridge, Illinois.	:	

PROPOSED ORDER

By the Commission:

On March 16, 2015, Maher Jarad ("Complainant") filed a formal complaint (the "Complaint") against Commonwealth Edison Company ("ComEd") pursuant to Section 10-108 of the Public Utilities Act (220 ILCS 5/10-108) ("the Act"), alleging that ComEd improperly billed him $1,074.90 for an overhead-to-underground electrical conversion, after telling him that there would be no charges for installation of service at his new home at 416 N. Seminary Ave., Park Ridge, Illinois.

I. Background

Pursuant to notice as required by the rules and regulations of the Commission, this matter was scheduled for a pre-hearing conference on April 29, 2015, before a duly authorized Administrative Law Judge ("ALJ") of the Commission at its offices in Chicago, Illinois. Complainant appeared pro se. ComEd appeared by counsel and stated that it would file a motion to dismiss the Complaint.

This matter was continued generally. ComEd filed its Motion to Dismiss on May 29, 2015. Complainant filed his Response on July 15, 2015, and ComEd filed its Reply on July 31, 2015.

II. ComEd Motion to Dismiss

ComEd argues first that the Complaint is barred by the statute of limitations. ComEd cites Section 9-252.1 of the Act, which states in relevant part:

> 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.

(220 ILCS 5/9-252.1)

ComEd states that on February 1, 2013, Complainant agreed to pay $1,074.90 for installation of a secondary riser on a pole at 416 N. Seminary Ave., a sum he now disputes. (ComEd Ex. A). Complainant made the actual payment on February 13, 2013. This action was brought more than two years later, on March 16, 2015. The Complaint is barred in its entirety by the statute of limitations and must be dismissed with prejudice.

ComEd argues second that the Complaint is barred by ComEd's tariffs. Pursuant to Rider NS, when a customer requests different facilities than those needed to provide standard electric service:

> the Company is allowed to recover from the retail customer the costs of furnishing, installing, owning, operating, replacing and maintaining such services or facilities, including the cost consequences of an applicable federal or state income tax liability.

(ComEd Ex. C; Ill.C.C. No. 10, original Sheet No. 277).

Rider NS also provides that "(T)he type, extent and location of such non-standard services and facilities are determined by agreement between the Company and the retail customer…" (*Id*.; Ill.C.C. No. 10, original Sheet No. 278).

Pursuant to Rider NS, ComEd detailed for Complainant the work that was to be performed for the sum of $1,074.90, and Complainant acknowledged that he was to pay this amount pursuant to tariff. (ComEd Exhibit A). ComEd's recovery of costs associated with the work performed is consistent with Rider NS. ComEd asserts that the Complaint is barred by ComEd's Commission-approved tariffs and must be dismissed with prejudice.

III. Complainant Response

Complainant argues that he was initially told by ComEd that there would be no additional charge, yet ComEd later informed him that it had the right to charge him for the installation service. Complainant states that he did not sign the contract when it was first sent to him but was advised by ComEd that he would have to sign the document or he would not receive service.

Complainant also argues that he originally filed a complaint in February 2014. He explains that he did not pursue the complaint, because a few days after filing it, he was asked by ComEd not to submit the complaint because it was looking into obtaining for him some type of credit. He stated that he did not hear from ComEd for approximately 30 days, so when he called ComEd back, he was informed that it could do nothing for him. Complainant argues that if this leads to his complaint being barred by ComEd's tariffs, all ComEd employees should know this.

He argues furthermore that it was ComEd's employee who called him to request that he not proceed with his complaint, so it could obtain for him some type of credit. He questioned why, if ComEd had the right to charge him for this service, would anyone from

ComEd inform him otherwise. He also questioned why, if ComEd would not issue him a credit, it would not have told him that immediately. He argues that if ComEd had the right to charge him for the service, it should train its employees to inform the customer of the charges. Complainant states that he also spoke to two people in ComEd's New Business Department and no one there knew about the charges.

Complainant attached to his Response a ComEd Customer Relations Department Escalated Complaint Response showing that his complaint with ComEd was closed in November 2013. On that basis, he questioned why ComEd would ask him not to file his complaint in February 2014.

IV. ComEd Reply

ComEd reiterates that the Complaint fails as a matter of law and that Complainant failed to address the arguments ComEd set forth in its Motion to Dismiss.

Complainant attempts to circumvent the statute of limitations by claiming ComEd induced him wait to file his complaint, but then admits that he filed his grievance with the Commission in February 2014. He provides no explanation for not filing his Complaint until a year later. If ComEd failed to return his calls for over a month and then told him he could obtain no relief, there is no reason for him to have waited so long to file his complaint.

Complainant cannot argue that the statute of limitations should be tolled because of ComEd's conduct. On February 1, 2013, he agreed to pay $1,074.90. He could have refused to pay or brought this action at that time, but instead made the payment on February 13, 2013. He then waited nine months to complain to ComEd, waited three more months to complain to the Commission, and waited another 13 months to file his Complaint.

ComEd argues again that this matter is barred by Section 9-252.1, because it was brought more than two years after Complainant knew of the $1,074.90 charge. Complainant also has no answer for ComEd's assertion that his Complaint is barred by tariff, which he acknowledged by his signature on February 1, 2013. Complainant instead suggests that, since a ComEd employee tried to work with him after he filed his initial complaint with the Commission, the tariff must be incorrect. The conduct of a ComEd employee is irrelevant to the applicability of the tariff. Complainant acknowledged that the tariff applies when he agreed on February 1, 2013 to pay for the work.

V. Commission Analysis and Conclusions

A. Section 9-252.1 of the Act

Section 9-252.1 of the Act requires a complaint alleging incorrect billing to be filed "no more than two years after the customer first has knowledge of the incorrect billing." (220 ILCS 5/9-252.1).

Complainant states that he initially filed his complaint with the Commission some time in February 2014. (Complaint at 1; Complainant's Response to Motion to Dismiss at 2). Complainant did not make clear whether he filed with the Consumer Services Division ("CSD"), or filed the complaint as a docketed proceeding, however, a search of the Commission's e-Docket system fails to disclose any 2014 docketed proceeding bearing Complainant's name.

In any case, he did not pursue the complaint in February 2014, based upon ComEd's representation that a credit to his account might be granted. When he did not hear from ComEd about the possible credit over the next 30 days, he called ComEd and was told no credit would be granted. (Complainant's Response to Motion to Dismiss at 2). Insofar as Complainant signed the contract for service with ComEd on February 1, 2013, the Commission finds that he had knowledge of what he considered to be an incorrect billing as of that date, and the two-year provision of Section 9-252.1 began to run. (ComEd Exhibit A). The Complaint was filed with the Commission on March 6, 2015.

The Commission finds that the Complaint is time-barred by Section 9-252.1 of the Act and should be dismissed, with prejudice.

VI. Findings and Ordering Paragraphs

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

(1) on March 6, 2015, Maher Jarad filed his Complaint against Commonwealth Edison Company alleging that Commonwealth Edison Company had incorrectly billed him $1,074.90 for an overhead-to-underground electrical conversion, after telling him that there would be no charges for installation of service at his new residence;

(2) Commonwealth Edison Company is an Illinois corporation engaged in furnishing electric service to customers in Illinois and, as such, is a public utility within the meaning of Section 3-105 of the Act (220 ILCS 5/3-105);

(3) the Complaint was filed over two years after Complainant had knowledge of the incorrect billing and is time-barred by Section 9-252.1 of the Act; and

(4) Commonwealth Edison Company's Motion to Dismiss should be granted and this matter should be dismissed, with prejudice.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that Commonwealth Edison Company's Motion to Dismiss the Complaint is granted, with prejudice.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

DATED:	November 9, 2015
BRIEFS ON EXCEPTIONS DUE:	November 23, 2015
REPLY BRIEFS ON EXCEPTIONS DUE:	November 30, 2015

John T. Riley,
Administrative Law Judge