

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Leonard S. Clayton :
-vs- :
Commonwealth Edison Company : **15-0367**
: :
Complaint as to billing/charges in :
Chicago, Illinois. :

PROPOSED ORDER

By the Commission:

On May 22, 2015, Leonard S. Clayton (“Complainant”) filed a verified Complaint against Commonwealth Edison Company (“ComEd”, “Respondent”, or “Company”) alleging incorrect billing at his residence in Chicago, Illinois.

Pursuant to notice given in accordance with the law and the rules and regulations of the Commission, a prehearing conference was held before two duly authorized Administrative Law Judges (“ALJs”) of the Illinois Commerce Commission (“Commission”) on June 17, 2015 at the offices of the Commission in Chicago, Illinois. An additional status hearing was held on July 23, 2015. The evidentiary hearing was held on October 8, 2015. At the evidentiary hearing, Mr. Clayton and his wife, Virginia Clayton, testified in support of the Complaint. Mr. Jaleon Wakefield, Energy Technician at ComEd, and Ms. Marilyn Widmer, Senior Business Analyst in the Customer Relations Department for ComEd, testified on behalf of Respondent.

I. Complainant’s Position

Mr. Clayton testified that he has been charged for electricity that was being stolen from his meter. Tr. at 76. Mr. Clayton owns a two-flat residence, and he resides on the first floor. He believes that his niece, who lived on the second floor of his residence, was stealing electricity from his meter and he was billed for that usage. Mr. Clayton believes the electricity was stolen from 2009 to 2014. There are three meters attached to the residence, one each for the basement, first floor, and second floor. Mr. Clayton stated that he caught someone “messing with” the meter for the second floor of his residence. Tr. at 77-79. Mr. Clayton testified that he knows he was being charged for electricity for the second floor because of the high bills and the fact that he spoke with a ComEd meter reader who told him that he was being charged for electricity for the entire building.

Mr. Clayton testified that in 2010 his bills for electricity usage for the basement jumped from \$37 to over \$300 a month. He testified that he wrote letters to ComEd explaining that his electricity was being stolen but that ComEd never received them. Mr. Clayton’s niece lived on the second floor of his residence from 2009-2014. Tr. at 99. Mr. Clayton stated that his niece later attempted to get her power turned on under her

daughter's name. He also stated that he went to a Chicago police department to report his niece's attempt to steal his electricity. Mr. Clayton presented a bill issued January 7, 2015 with late charges in the amount of \$5,259. Compl. Ex. 5.

Mr. Clayton also testified that at a status hearing he learned that he was not a customer of ComEd but was receiving power from North American Power & Lighting ("North American Power"), an Alternative Retail Electric Supplier ("ARES") certified to supply power to Illinois' ComEd customers by the Commission. Tr. 82-83. Mr. Clayton stated that he does not know how he became a customer of North American Power, and he does not remember subscribing to that ARES. Tr. at 109-110.

Ms. Clayton testified that she wants the issue to be resolved so the couple can pay their bill every month. Tr. at 123.

II. Respondent's Position

Mr. Wakefield testified that he is an Energy Technician at ComEd but until two years ago, he was a meter reader. Tr. at 124. He read the meter at Mr. Clayton's residence and remembers speaking with him on "a couple of" occasions. Mr. Wakefield stated that Mr. Clayton expressed concern that someone was stealing his electricity. Mr. Wakefield stated that he told Mr. Clayton that in order to verify that electricity was being stolen, someone from ComEd would have to come out to his residence and examine it because all Mr. Wakefield could do was read the meter. Tr. at 125-26. Mr. Wakefield stated that he would not have been able to tell whether the electricity usage for the entire building was being charged to Mr. Clayton's meter. Id. Mr. Wakefield testified that he read Mr. Clayton's meter over a period of 12 months and denied that he had told Mr. Clayton that Mr. Clayton was being charged for the entire building's usage. Id. Further, in response to questioning by Mr. Clayton, Mr. Wakefield denied being intimidated or threatened prior to testifying at the evidentiary hearing. Tr. at 130.

Ms. Widmer testified that she reviewed Mr. Clayton's account, activity statements, and meter records. Tr. at 132. The current balance on Mr. Clayton's account is \$17,928.29. According to Ms. Widmer, Mr. Clayton made payments of \$350 in March of 2015 and \$693 in May of 2015. Ms. Widmer confirmed that Mr. Clayton's supplier is North American Power. Tr. at 135. Ms. Widmer testified that Mr. Clayton was the account holder of record for the second floor of his building from 2002-2009. He was the account holder of record for the basement of his building from 1978-2009. Tr. at 137-38; Resp. Ex. 3. Ms. Widmer states that the activity statements show that Mr. Clayton has not been charged for electricity consumed by the second floor since 2009 because no bills were issued and the statements say "inactive." Tr. at 139. Ms. Widmer testified that ComEd's current price per kilowatt hour ("kwh") is 8 cents. According to Mr. Clayton's bills, he is being charged under a variable rate plan by North American Power. That rate has fluctuated between 9 cents/kwh and 15 cents/kwh over the past two years. Tr. at 145-46. During that same time period, ComEd's rate was 4.5 cents/kwh. Ms. Widmer testified that this explains the reason Mr. Clayton's bill is so high, coupled with the fact that over the past two years, he has only made four payments and has therefore accrued late fees on his account. Tr. at 160-61.

III. Commission Analysis and Conclusion

The Commission has jurisdiction over both Complainant and Respondent. Complainant is a resident of Chicago, Illinois, and a customer of ComEd. Respondent is engaged in providing electric service in the State of Illinois and is a public utility under Section 3-105 of the Public Utilities Act. 220 ILCS 5/3-105.

Mr. Clayton currently owes \$17,928.29 to ComEd, a portion of which is late fees. ComEd Ex. 1. Despite his claims that his niece has been stealing his electricity and he has been paying it, it is clear from ComEd Ex. 2 that while there was usage from the second floor between October 30, 2009 and September 18, 2013, no one was billed for that usage. The Bill Class is labeled "Consumption on Inactive Meter." ComEd Ex. 2.

Mr. Clayton has been a customer of North American Power since May 2, 2012, when ComEd received a request from the ARES to change supply from ComEd to North American Power. ComEd Ex. 2. The account summary provided by the Respondent illustrates that Mr. Clayton is on a variable rate contract with that supplier. Mr. Clayton's monthly price per Kwh has ranged from almost ten cents per Kwh to almost sixteen cents per Kwh during the winter months of 2014 and 2015, when Mr. Clayton's usage was highest, no doubt due to the winter weather. ComEd Ex. 4. During that same time period, Ms. Widmer testified that ComEd's price per Kwh ranged from four cents to nine cents. Additionally, Mr. Clayton has only made two payments on his account in 2015. This would explain Mr. Clayton's high bills, rather than theft by his niece.

Part 412 of the Commission's Rules govern the requirements of ARES and customers. Specifically, Section 412.110 describes the minimum contract terms and conditions the ARES must disclose to the customer:

The sales contract must disclose the following information to the customer, regardless of the form of marketing used. The sales contract must use 10 point font or larger, and, if it is a separate document, it must not exceed two pages in length. The sales contract shall include:

- a) The legal name of the RES and the name under which the RES will market its products, if different;
- b) The RES' business address;
- c) The RES' toll-free telephone number for billing questions, disputes and complaints, as well as the Commission's toll-free phone number for complaints;
- d) *The charges for the service for the length of the contract and, if any charges are variable during the term of the contract, an explanation of how the variable charges are determined;*
- e) *The length of the contract, including any possible automatic renewal clause;*
- f) *The presence or absence of early termination fees or penalties, applicable amounts or the formula pursuant to which they are calculated;*

- g) Any requirement to pay a deposit for power and energy service, the estimated amount of the deposit or basis on which it is calculated, when the deposit will be returned, and if the deposit will accrue interest;
- h) Any fees assessed by the RES to a customer for switching to the RES;
- i) *The name of the power and energy service for which the customer is being solicited;*
- j) A statement that the customer may rescind the contract, by contacting the RES, before the RES submits the enrollment request to the electric utility;
- k) A statement that the customer may rescind the contract and the pending enrollment, within 10 calendar days after the electric utility processes the enrollment request, by contacting the RES. Residential customers may rescind the contract and the pending enrollment by contacting either the RES or the electric utility. The statement shall provide both toll-free phone numbers;
- l) A statement that the RES is an independent seller of power and energy service certified by the Illinois Commerce Commission and that the agent is not representing or acting on behalf of the electric utility, governmental bodies (unless the RES has entered into a contractual arrangement with the governmental body and has been authorized by the governmental body to make the statements) or consumer groups;
- m) A statement that the electric utility remains responsible for the delivery of power and energy to the customer's premises and will continue to respond to any service calls and emergencies and that switching to an RES will not impact the customer's electric service reliability;
- n) *A statement that the customer will receive written notification from the electric utility confirming a switch of the customer's power and energy supplier;*
- o) If savings are guaranteed under certain circumstances, the RES must provide a written statement, in plain language, describing the conditions that must be present in order for the savings to occur. In the case of telemarketing and in-bound enrollment calls, the statement shall be provided in accordance with Sections 412.130(e) and 412.140(c); and
- p) A price per kilowatt hour (kWh) for the power and energy service...

83 Ill. Adm. Code 412.110 (*emphasis added*). The Commission further notes that pursuant to Docket No. 15-0512, the Commission has initiated a rulemaking to investigate a possible rewrite of Code Part 412. Specifically, the parties are examining the

requirements concerning supplier contracts using variable rates. Docket No. 15-0512, Initiating Order dated September 10, 2015 at 2.

According to Mr. Clayton, he was switched to this ARES without his knowledge or consent. The Commission encourages him to contact North American Power and obtain information about his account. If he is not satisfied with their responses, the Commission encourages him to work with the Commission's Bureau of Consumer Services. The phone number for Consumer Services is 800-524-0795. Mr. Clayton may also file a formal complaint against the North American Power, pursuant to Section 200.170 of the Commission's Rules of Practice, if he is dissatisfied with the resolution of this issue. 83 Ill. Adm. Code 200.170.

The Commission directs ComEd to work with the Complainant to put him on a "Deferred Payment Arrangement" or "DPA." Section 280.120 of the Commission's Rules discusses the terms of such arrangements:

a) Intent: Payment arrangements shall be structured and administered to maximize the successful retirement of past due utility service amounts owing to the utility while allowing the customer to retain active utility service.

b) Eligibility:

1) Mandatory offering by the utility: A residential customer owing a past due amount for utility service shall be eligible for a deferred payment arrangement so long as the customer has not failed to complete a previous DPA in the past 12 months.

A) At any time a customer's account balance owing is brought to current status, the utility shall consider all previous DPAs completed.

B) A customer who is eligible for a DPA under this subsection (b) shall remain fully eligible until utility service is disconnected.

83 Ill. Adm. Code 280.120. Such an arrangement would assist Mr. Clayton in becoming up to date in his overdue bills and will require that he retain electric service while he is retiring the amount owed. ComEd is directed to remove any late fees or interest that has accrued on his account since 2009.

IV. Findings and Ordering Paragraphs

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

- (1) Respondent, Commonwealth Edison Company, is engaged in providing electric service in the State of Illinois and, as such, is a public utility within the meaning of the Illinois Public Utilities Act;
- (2) Complainant, Leonard S. Clayton, alleges that Commonwealth Edison Company improperly billed him for electric service between 2009 and 2014;

- (3) the Commission has jurisdiction over the parties and the subject matter herein;
- (4) the findings of fact and the conclusions of law set forth in the prefatory portion of this Order conform to the evidence of record and the law and are hereby adopted as findings of fact and law herein;
- (5) Respondent has shown that Complainant was accurately billed based on the evidence described above;
- (6) Complainant owes \$17,928.29, minus any late payment fees and interest;
- (7) Commonwealth Edison Company is ordered to assist Complainant in returning to a Deferred Payment Arrangement for his past due amount; and
- (8) based on Finding (5), the subject Complaint should be denied.

IT IS THEREFORE ORDERED that the Complaint filed by Leonard S. Clayton on May 22, 2015 against Commonwealth Edison Company be denied as described herein.

IT IS FURTHER ORDERED that any objections, motions or petitions not previously disposed of are hereby disposed of consistent with the findings of this Order.

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:
BRIEFS ON EXCEPTION DUE:
REPLIES ON EXCEPTION DUE:

December 14, 2015
December 28, 2015
January 4, 2015

Leslie D. Haynes
Jessica L. Cardoni
Administrative Law Judges