

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY,	:	
Complainant,	:	
v.	:	
GRACE BIBLE CENTER,	:	No. 13-0469
Respondent.	:	
Complaint regarding unlawful establishment	:	
of retail service accounts by a person that is	:	
not a retail end-use customer	:	

**REPLY BRIEF ON EXCEPTIONS OF
COMMONWEALTH EDISON COMPANY**

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. RESPONSE TO STAFF’S BOE.....	3
III. RESPONSE TO GBC’s BOE	4
A. Deception Allowed GBC to Operate its Program.....	4
B. The ALJ Granted the Relief Requested by ComEd	7
C. ComEd’s Transfer of Balances from a Disconnected Account to an Open Account Does Not Make GBC’s Program Legal or Present Contested Issues of Fact.....	8
D. The Fact that Participants Paid by Money Order Did Not Mean ComEd Acquiesced to GBC’s Program.....	10
E. Whether GBC Paid for the New Accounts or Not, the UAP Is Designed to Allow Users to Get Service Without Payment of the Past Due Balances	11
F. GBC’s Admission that New Regulations Bar the UAP Does Not Mean the UAP was Legal Under the Old Regulations	11
IV. CONCLUSION.....	13

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY,	:	
Complainant,	:	
v.	:	
GRACE BIBLE CENTER,	:	No. 13-0469
Respondent.	:	
Complaint regarding unlawful establishment	:	
of retail service accounts by a person that is	:	
not a retail end-use customer	:	

**REPLY BRIEF ON EXCEPTIONS OF
COMMONWEALTH EDISON COMPANY**

Commonwealth Edison Company (“ComEd”), by its counsel, in accordance with Section 200.830 of the Rules of Practice of the Illinois Commerce Commission (the “Commission” or “ICC”), 83 Ill. Adm. Code 200.830, and the schedule established by the Administrative Law Judge (“ALJ”), submits this Reply Brief on Exceptions (“Reply BOE”) in response to the Briefs on Exceptions (“BOEs”) filed by the Staff of the Commission (“Staff”) and Grace Bible Center (“GBC”) to the Administrative Law Judge’s (“ALJ”) Proposed Order dated January 21, 2016 (“Proposed Order” or “PO”). ComEd states as follows:

I. INTRODUCTION

Staff’s Brief on Exceptions does not take exception to the grant of ComEd’s Motion for Summary Judgment or the denial of GBC’s Motion for Summary Judgment, but does propose modifications to the language included in the Proposed Order to make clear that the ruling here is limited to the facts of this case and will not automatically apply to other third-party payer customer scenarios. ComEd had maintained from the inception of this case that its complaint here is focused on deciding the issues presented by GBC’s Utility Assistance Program (“UAP”),

and that the requested relief was not intended to address or decide other third-party payer customer scenarios. ComEd agrees with and did not take exception to the language in the Proposed Order making clear that the order in this proceeding is limited to the facts presented here for GBC, and does not oppose Staff's proposed edits to add greater specificity to that language with some minor clarifying edits discussed below. Counsel for Staff has advised counsel for ComEd that Staff does not oppose those minor revisions.

GBC's Brief on Exceptions mischaracterizes the facts and tries to misdirect the focus of the Commission to a state court case GBC filed, which the Proposed Order explicitly notes is not relevant to the regulatory matters presented here and was not considered. PO at 9, fn. 6. In summary, GBC's exceptions are a baseless attempt to undermine an adverse ruling on the merits. GBC's brief is misguided in six ways. First, contrary to GBC's protests, the deceptive nature of the UAP is supported by the uncontested facts, inherent in the UAP, and properly relied upon by the Proposed Order to find the UAP illegal and distinguish it from other permitted third-party payer scenarios. The deceptive nature of the UAP is also critical to the Proposed Order's finding that the UAP deprives participants of protections for customers contained in the Public Utilities Act (the "Act" or "PUA"), 220 ILCS 5/1-101 et. seq., and the Commission's rules. Second, the Proposed Order does not exceed the Commission's authority and properly grants ComEd's motion by making findings in accordance with ComEd prayer for relief: that GBC is not an authorized retail customer. Third, the Proposed Order correctly grants ComEd's motion for summary judgment and denies GBC's, finding support in the fact that ComEd's billing system transferred the balance of one GBC account to another. That fact is a prime example of the harm the UAP causes by not disclosing the actual user and customer. Fourth, in a similar vein, the fact that the actual end users in the UAP may have paid ComEd with money orders indicating their

names did not mean that ComEd acquiesced to reconnecting end users who were disconnected for not paying past due balances. Fifth, GBC's offer to pay for the accounts going forward is beside the point: the UAP is a scheme to avoid tariffs and rules that do not allow former customers with past due balances to be reconnected and receive new service without making arrangements to pay the outstanding balances. Finally, the fact that GBC now agrees that it may not enroll new members into its UAP does not mean that its program was legal before the amendment of 83 Ill. Adm. Code § 280.40.

II. RESPONSE TO STAFF'S BOE

As explained above, ComEd has not sought and does not seek a broad policy ruling from the Commission to be applicable to other situations beyond the facts presented here for GBC and the UAP. ComEd has no objection to the substance of the additional language proposed by Staff. However, Staff's language should be modified slightly to prevent a misreading of the order as somehow denying relief requested by ComEd, and to further clarify that ComEd sought no such relief. Accordingly, Staff's proposed revisions to the Proposed Order should be revised as follows (edits to Staff's proposed revisions are shown in double underlined (blue) text and strikethrough (red) text):

These few examples illustrate that Grace Bible's deception not only circumvents the statutory definition of a "retail customer," it also thwarts the protections that consumers are afforded by the Act and the Commission's regulations.

In so finding, however, we make clear that we do not, in this Order, adopt any finding or conclusion that might be construed to stand for the proposition that an applicant for service must reside in the premises in question in order to become a customer at those premises. Further, we do not adopt by this Order any finding or conclusion that might be construed as a "benefit-of-service" rule, pursuant to which a utility might deny or condition service to a qualified applicant for service at specific premises, based upon nothing more than its belief that other persons resident at the premises owed unpaid balances to the utility; or, in the alternative, require the qualified applicant for service to defray such unpaid balances prior to obtaining service from the utility. [We note that ComEd also does not ask us to](#)

make any general pronouncements in this proceeding. To the extent that a utility has any right to do so, such right is established by, and is no more extensive than, what is provided for in our Rule 280.210, entitled “payment avoidance by location[.]” 83 Ill. Adm. Code 280.210. This Order is not intended to, and specifically does not, expand, augment or otherwise supplement a utility’s rights beyond what is provided for in that Section, which remains the exclusive administrative remedy for a utility which seeks to condition service to an applicant at a specific location based upon the disconnection for unpaid balance of former customers resident at that location.

* * *

Obviously, the facts here are truly unique. The Commission’s decision here has no application to other factual situations which could involve a user/users of electricity that is/are not the same as the person or entity that pays the utility bills. Moreover, and as discussed above, ComEd did not argue and the Commission specifically does not rule in this order ~~declines to determine~~ that an applicant for service must reside in the premises in question in order to become a customer at those premises. In addition, ComEd did not argue and the Commission specifically ~~declines to, and~~ does not, adopt in this proceeding any sort of “benefit-of-service” rule, and stresses that utilities must comply fully with Rule 280.210 in the event that they attempt to condition service to a qualified applicant for service at specific premises, based upon the belief that other persons resident at the premises owed unpaid balances to the utility. Additionally, because this ruling finds Section 16-102 of the Act to apply here, the Commission need not decide whether Grace Bible was illegally reselling electricity. Thus, there is also no need for the Commission to address the applicability of a 1960 case cited by Grace Bible, Chicago Housing Authority, 20 Ill. 2d 37, 169 N.E. 2d 268, which concerns whether the Chicago Housing Authority was a “reseller.”

ComEd also notes that it has presented its proposed language revisions to Staff counsel, and Staff counsel advised counsel for ComEd that Staff has no objection to those language revisions.

III. RESPONSE TO GBC’S BOE

A. Deception Allowed GBC to Operate its Program

Based on the uncontested facts, the Proposed Order draws the logical, proper, and unavoidable conclusion that the UAP operates by deception. It depends on ComEd not knowing that Grace Bible is not the end user and that the end user is someone who was previously disconnected for not paying their bill. The ALJ recognized this basic and uncontested feature of

the UAP and relied on it to distinguish the program from other third-party payer programs that the Commission has approved. This should not be a surprise to GBC, as it stipulated to the facts necessary to the finding that its UAP is deceptive:

- Grace Bible Center (“GBC”) asks ComEd to open accounts exclusively in GBC’s name at premises where the actual retail user has been disconnected for not paying their ComEd elective service bills.
- GBC is not the end user of electric service at the locations for which it requests and takes retail utility service under its Utility Assistance Program the (“UAP”).
- When GBC calls ComEd to open a new account, it does not tell ComEd that the end user is a disconnected retail customer whose electric service was disconnected because of unpaid bills.¹

These findings resulted from GBC’s deliberate avoidance of discovery: After ComEd served a notice for the deposition of Pastor Anthony Simmons in March of 2014, the creator and architect of the program, he disappeared and has not resurfaced. After nearly a year of delay by GBC, ComEd moved to impose sanctions because the disappearance of Simmons allowed him to avoid answering numerous questions about the UAP, including: “You knew ComEd would not open the account if you told them the new service was being used by a retail customer whose electric service was disconnected because of unpaid bills, didn’t you?”

The ALJ made the findings after applying law holding that failure to respond to discovery justifies the inference that what the respondent would have stated would be adverse to his interest. The ALJ also found that “The UAP conceals from ComEd the identity of the real end-user and it conceals the fact that the real end user owes money to ComEd.”² In other words, the

¹ April 25, 2015 Administrative Law Judge’s Ruling, Findings 1-3. GBC stipulated that these findings were specifically sought in ComEd’s Motion for Sanctions (Commonwealth Edison Company’s Draft Administrative Law Judge’s Ruling Granting Motion for Sanctions with Findings Made as Sanctions, (April 23, 2015) at 1) and further indicated in response to the Motion for Sanctions that it had no objections to findings based on Ms. Bell’s deposition (Grace Bible Center’s Response To Commonwealth Edison Company’s Motion To Impose Sanctions For Failure To Appear For Deposition, (March 9, 2015) at 2), which includes Findings 1-3.

² April 25, 2015 Administrative Law Judge’s Ruling, Finding 4.

ALJ concluded the obvious: when GBC opens accounts in its name and does not tell ComEd that the end users were disconnected for not paying for service, GBC is concealing that information from ComEd.

While GBC protests that the ALJ had no evidence upon which to base a finding of deception, the foregoing evidence is more than sufficient. Furthermore, the finding of deception is central to the ALJ's ruling that the UAP is illegal. "Grace Bible's utility assistance program relied upon Grace Bible unlawfully purchasing utility services, not for retail use, but for re-transfer to program participants. As previously stated, this scenario is achieved through deception, which makes this case different from other situations where a person/entity that pays the bills is not the person/entity that uses the utility services."³

That excerpt from the Proposed Order is a direct response to GBC's argument that its program is no different from other situations in which the bill payer is not the end-user (such as a parent paying for a child. This deception is a major basis for the Proposed Order: the UAP is not like other permitted third-party payer arrangements because those arrangements do not re-connect people who were disconnected for not paying their bills.

Moreover, the Proposed Order properly concludes that, not only is the UAP "achieved through deception," but "[i]t also deprives the actual end-users (the program participants) of the protections afforded them by the Act and the Commission's regulations." PO at 10, 11. Contrary to GBC's assertion, one cannot invoke the worthy goal of customer assistance to justify a program that operates contrary to applicable laws, statutes, and regulations through deception. Further, and contrary to GBC's asserted altruistic intentions, GBC explicitly required UAP

³ Proposed Order at 10.

participants to agree to numerous peculiar provisions of the UAP which resulted in the deprivation of protections afforded by the Act and Commission regulations. PO at 10-11.

B. The ALJ Granted the Relief Requested by ComEd

The ALJ granted the relief ComEd asked for: “Find and conclude that GBC is not an authorized retail customer of ComEd at those premises where it is not the end-user of the electricity supplies or delivered.” Verified Amended Complaint of ComEd, at 6, prayer a. ComEd also asked the Commission to: “Find and conclude that, under the PUA and ComEd’s tariffs, ComEd is not required to provide retail utility services to GBC at premises where GBC is not the retail end-use customer.” *Id.* at 7, prayer b. Finally, ComEd requested the Commission to “Award such other relief as may be warranted by the record and is within the ICC’s jurisdiction.” *Id.* at 7, prayer c.

ComEd specifically asked for the relief the Proposed Order grants: that GBC is not a proper retail customer and that ComEd does not have to provide service. What GBC is objecting to is the rationale for the ruling; but the rationale is central to the ruling.

In finding that GBC is not a proper retail customer, the ALJ relied on the PUA’s definition of “retail customer”: “a single entity using electric power or energy at a single premises.” 220 ILCS 5/16-102. The ALJ determined that “Grace Bible effectively asserts that it is the ‘retail customer’ when a Grace Bible representative calls to get reconnected service, but it does not inform the utility as to who the ‘retail customer’ actually is.” Proposed Order at 6. “By opening up an account in its name, even though it is not receiving the benefit of that account and is not really assuming liability for that account, Grace Bible is deceiving the utility as to who or what is receiving the benefit of the account.” *Id.*

The ALJ therefore found a principal reason GBC was not a retail customer and ComEd does not have to provide service is because GBC is deceiving ComEd about who is using the service. “[T]his scenario is achieved through deception, which makes this case different from other situations where a person/entity that pays the bills is not the person/entity that uses the utility services.” Proposed Order at 10.

The ALJ found that GBC is not a proper retail customer, as distinguished from parents paying for children and other third-party payers, because unlike those other parties, GBC deceived ComEd about the identity of the end-user and that the end-user still owes ComEd money. In sum, the ALJ granted the precise relief sought by ComEd. The fact that GBC does not like the factual findings supporting that determination has nothing to do with whether the relief granted was requested.

C. ComEd’s Transfer of Balances from a Disconnected Account to an Open Account Does Not Make GBC’s Program Legal or Present Contested Issues of Fact

The ALJ was correct to find that the UAP was illegal, notwithstanding the fact that ComEd’s billing system transferred the balance of one GBC account to another after the first was disconnected with a past due balance. GBC argues that its program should be allowed based on its assertion “that ComEd treated GBC as the customer responsible for payment of bills when it transferred balances between GBC accounts.” GBC BOE at 8. That argument is flawed for several reasons. First, as allowed under 83 Ill. Adm. Code 280.50(f), ComEd’s automated billing system transfers balances from a closed account to an open account of the same customer for the same class and type of service. The Commission’s regulations reflect the rationale that where the same customer has multiple accounts for the same type of service, such customer’s receipt of service is dependent on meeting its payment obligations on all of its accounts. But that

automated system is not a basis to decide whether a program like the UAP is permissible under the PUA and ComEd's tariffs.

Second, the Proposed Order properly finds GBC's transfer of account argument must fail because the situation GBC points to was caused by and exemplifies the deceptive basis of the UAP:

By opening up an account in its name, even though it is not receiving the benefit of that account and is not really assuming liability for that account, Grace Bible is deceiving the utility as to who or what is receiving the benefit of the account. It is also possibly deceiving the program participant as to who or what is actually responsible for that account. This can best be seen by the example cited in Grace Bible's Motion for Summary Judgment, whereby ComEd disconnected a program participant who was currently paying his or her ComEd bills, due to the fact that two other program participants were not paying their electric bills. This is in contrast to a situation where a person or entity decides to be responsible for payment of utility bills for the benefit of another person or persons. It is also in contrast to a situation where a person or entity provides utility services for the benefit of others, such as, in the case of an apartment building, office building or mall, but retains full responsibility to provide utility services to others.

PO at 6. Having deceived ComEd into accepting GBC as the customer under the UAP, GBC cannot rely on the success of its deception to somehow defeat the illegality of its program. Rather than call into question the grant of summary judgment for ComEd and the denial of summary judgment for GBC, these facts strongly support that determination.

Third, if GBC was correct that its program is like the other permissible arrangements for third parties to pay electric bills, then GBC would not have protested the transfer. In those other arrangements, the third parties agree to be responsible for the bill.

Finally, although GBC claims it is liable for the bill (GBC BOE at 11), if its participant is unable to pay, GBC closes the account, rather than continue to pay into the future for the participant. *See* PO at 10; April 27, 2015 Administrative Law Judge's Ruling, Finding 12. In fact, GBC's argument shows that GBC is not taking responsibility. Some of its accounts had unpaid balances that it did not and will not pay. GBC asks to have its cake (being the

responsible customer) and eat it too (disavowing accounts when the real end user does not pay and the account is past due). Therefore, the transfer of balances does not mean GBC's program is legal.

D. The Fact that Participants Paid by Money Order Did Not Mean ComEd Acquiesced to GBC's Program

The fact that the actual end users in the UAP may have paid ComEd with money orders revealing their identity did not mean that ComEd agreed to the UAP. GBC argues in its brief (at 10) that ComEd was not deceived by the UAP because program participants usually paid by money order showing their identity. Even if that were true, it does not prove that ComEd was aware that the purpose of the program was to re-connect end users who were disconnected for failing to pay their bill (Ms. Bell testified to the money orders but very few program records were produced because they were allegedly "lost" when GBC moved). That argument is flawed for two reasons. First, the argument is based on the unreasonable and illogical assumption that ComEd compares the name on a money order or check used to make a payment with its records of disconnected customers, which it does not. ComEd processes monthly payments for its approximately 3.8 million customers. The suggestion that it would somehow investigate all of its payments and uncover the deceptions perpetrated by the UAP is not only contrary to reason and logic, but amounts to blaming the victim for not uncovering the UAP's deceptions. Moreover, imposing such an obligation on a utility would be costly and inefficient, and not in the best interest of ratepayers.

Second, even if ComEd had a method of cross-checking the multitude of money orders and checks it receives with disconnected customers, that would still not prevent the UAP because the participants have already signed up by the time ComEd receives their payment. ComEd's only resort at that point would be to investigate each such account and potentially disconnect the

account. This course of action would be costly and impractical and misses the point. The PUA and ComEd's tariffs establish the rules for who may be a retail customer. GBC's arguments would require significant extra "detective" work by ComEd, which the statute and regulations do not contemplate. In sum, the form of payment used by the participants in the UAP is not the decisive factor that GBC argues it is. It does not change the fact that GBC admits it did not tell ComEd who the real end users were.

E. Whether GBC Paid for the New Accounts or Not, the UAP Is Designed to Allow Users to Get Service Without Payment of the Past Due Balances

GBC's offer to pay for the accounts is beside the point: under applicable tariffs, statutes, and regulations, former customers with past due balances may not receive new service without making arrangements to pay their balances. GBC argues (at 11) that going forward it paid for the accounts it opened on behalf of program participants. But the point is not whether GBC paid for the accounts. The point is that the program is designed to allow participants to receive service without paying a past due balance, contrary to the PUA, Part 280, and ComEd's tariffs. GBC argues that "[t]here is no need" for ComEd to assess the creditworthiness of the program participants because GBC has agreed to pay the bill for the new account (at 11). But that ignores the past due bill that GBC's UAP avoids paying. Again, the problem is the basic deceptive nature of the UAP.

F. GBC's Admission that New Regulations Bar the UAP Does Not Mean the UAP was Legal Under the Old Regulations

Finally, the fact that GBC now agrees that it may not enroll new members into its UAP does not mean that its program was legal before the amendment of 83 Ill. Adm. Code § 280.40. GBC states that section 280.40 now bars its program because a utility may deny service if "a former customer who was disconnected for non-payment at the same service location still resides

at the service location.” GBC BOE at 13. But this assertion does not address the issue decided by the ALJ on the cross-motions for summary judgment: whether GBC’s program is permitted by the PUA and ComEd’s tariffs at the time the program participants signed up. As the ALJ correctly notes, the regulation is not retroactive and “[t]herefore, the prior version of this regulation, as well as the prior version of other regulations in Part 280, are applicable here.”⁴ Put another way, the fact that the regulation was amended in a way that GBC sees as eliminating its program does not resolve the question of whether the program was legal in the first place.

⁴ Proposed Order at 5-6, fn.3.

IV. CONCLUSION

WHEREFORE, based on the law, the record, and the arguments made herein, the Commission should issue a final Order consistent with Proposed Order, this Reply BOE including the revised language set forth herein to accommodate Staff's proposed exceptions language.

Dated: March 11, 2016

COMMONWEALTH EDISON COMPANY

By: Carmen L. Fosco
One of its Attorneys

Thomas S. O'Neill
Senior Vice President & General Counsel
COMMONWEALTH EDISON COMPANY
440 South LaSalle Street, Suite 3300
Chicago, Illinois 60605
(312) 394-5400
thomas.oneill@exeloncorp.com

E. Glenn Rippie
Carmen L. Fosco
ROONEY RIPPIE & RATNASWAMY LLP
350 West Hubbard Street, Suite 600
Chicago, Illinois 60654
(312) 447-2800
glenn.rippie@r3law.com
carmen.fosco@r3law.com

Anastasia O'Brien
Nicole Nocera
10 South Dearborn Street, Suite 4900
Chicago, Illinois 60603
(312) 394-5400
anastasia.obrien@exeloncorp.com
nicole.nocera@exeloncorp.com

Kenneth E. Kraus
Todd H. Flaming
KRAUSFLAMING LLC
20 South Clark Street, Suite 2620
Chicago, Illinois 60603
ken@krausflaming.com
todd@krausflaming.com

Attorneys for Commonwealth Edison Company