

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company)	
-vs-)	
Grace Bible Church)	
)	Docket 13-0469
Complaint regarding unlawful)	
establishment of retail service)	
accounts by a person that is not)	
a retail end-use customer.)	

APPLICATION FOR REHEARING OF GRACE BIBLE CENTER

Pursuant to section 10-113 of the Public Utilities Act (the "Act") and section 200.880 of the Rules of Practice of the Illinois Commerce Commission (the "Commission") Grace Bible Center ("GBC"), by its attorneys, submits its Application for Rehearing ("Application") of the order issued in the above captioned docket entered on May 10, 2016 and served on May 11, 2016. ("the Order").

The Order obviously had the goal of finding that GBC's Utility Assistance Program ("UAP") violates Commonwealth Edison Company's ("ComEd's") tariffs while at the same time allowing other customers to do exactly what the UAP does. The Commission achieved this blatant violation of GBC's right to equal protection under the law by entering an order outside the scope of ComEd's First Verified Amended Complaint ("Complaint"), ignoring its own rules and making findings that are not supported by substantial evidence.

A. The Order Exceeds the Authority of the Commission.

ComEd's Complaint raised the simple issue of whether the Public Utilities Act and ComEd's tariffs require a retail customer to also reside at the premises where ComEd provides electricity. More specifically, the Complaint asked the Commission to determine that "under the PUA and ComEd's tariffs, ComEd is not required to provide retail utility services to GBC at

premises where it is not the end-user." ComEd Complaint, para 33. Thus, the WHEREFORE, section of the Complaint requested that the Commission "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 supplied or delivered" and that "ComEd is not required to provide retail utility services to GBC at premises where GBC is not the retail end-use customer."

The Order, however, explicitly ignores the scope of ComEd's requested relief:

The issue presented by ComEd is not whether a person who establishes and maintains an account with ComEd must also be the retail customer. Rather, it is whether the Act allows an entity that is not the retail customer to deceive a utility into believing that the entity is the retail customer.

Order, p. 5

The Order exceeds the Commission's authority because it rejects ComEd's requested relief. "The Commerce Commission cannot enter a valid order that is broader than the written complaint filed in the case." *The Alton and Southern Railroad et al. vs Illinois Commerce Commission ex rel. The Perry Coal Company et al.*, 316 Ill. 625 (1925), (citing *Public Utilities Com. v. City of Dixon*, 292 Ill. 521 (1920)); *Oregon Railroad and Navigation Co. v. Fairchild*, 224 U.S. 510 (1912). Here, ComEd raised the issue of whether a customer must also be the user of its electricity. Clearly, the Commission does not want to make such a finding. After all, how many parents are listed as the customers on their children's accounts, persons on their friend's accounts or any number of similar circumstances that ComEd's requested relief would endanger. So, the Order invents requested relief for ComEd that would allow the Commission to avoid directly responding to ComEd's request. That action exceeds the Commission's authority.

B. The Commission Acted Arbitrarily By Ignoring its Own Rule.

The Commission cannot act arbitrarily. *City of Chi. v. Ill. Comm. Comm'n*, 133 Ill. App.3d 435, 441 (1st Dist. 1985) ("[L]ike other administrative agencies, the Commission is free to change

its standards so long as such changes are not arbitrary and capricious.”). The Commission cannot take an approach in one order, and then arbitrarily use a different approach in a different order. *Niles Twp. High Sch. Dist. 219 v. Ill. Educ. Labor Rels. Bd.*, 369 Ill. App. 3d 128, 139 (1st Dist. 2006), (quoting *General Serv. Emps. Union, Local 73, SEIU v. Ill. Educ. Labor Rels. Bd.*, 285 Ill. App. 3d 507, 515-16 (1st Dist. 1996)).

The UAP fit squarely within the Commission's rule in effect when this case began, which recognized that "customers" pay bills and "users" reside in the premises. Thus, Section 280.40 of the Commission's rules provides the following definitions:

"Customer" - a person who has agreed with a utility to pay for gas, electric, water or sanitary sewer utility service. . .

"User" - a person who receives gas, electric, water or sanitary sewer utility service.

83 IAC 280.40

As the entity that contacted ComEd to establish service and agreed to be responsible for the payment of bills, GBC was ComEd's customer on all UAP accounts. ComEd relied on GBC's payment history to determine credit worthiness and held GBC responsible for payment. Pursuant to these definitions in the Commission's rule, the UAP participants were users of that service, but not the customers. Thus, the UAP is entirely consistent with the Commission's rule.

C. The Order Is Not Supported By Substantial Evidence.

The Order violates the Public Utilities Act because the findings of the Commission "are not supported by substantial evidence based on the entire record of evidence presented to or before the Commission for and against such rule, regulation, order or decision." 220 ILCS 5/10-201(e)(iv)(a).

The standard for granting a motion for summary judgment is even stronger. Summary judgment is appropriate only where the pleadings on file, as well as any evidence, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a

matter of law. 735 ILCS 5/2-1005; *Standard Mutual Ins. Co. v. Lay*, 2013 IL 114616, ¶15, 989 N.E.2d 591. Here, the Order is not supported by substantial evidence and it ignores genuine issues as to material fact when it granted ComEd's Motion for Summary Judgment.

The Order justifies treating GBC differently from other customers by claiming that GBC deceived ComEd into providing service to an applicant that will not be the user of service.

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.

Order at 10.

First, the finding that GBC deceived ComEd is completely without factual support. GBC's Answer, responses to data requests and the deposition of Ms. Bell all consistently demonstrate that GBC would ask ComEd to establish residential service at an address and provide ComEd with its name, FEIN and the fact that it has had previous service with ComEd. With that information, ComEd was able to determine that GBC had as many as sixty other residential accounts and was able to evaluate GBC's payment history on all of its accounts.¹ There is no evidence in the record that GBC ever told ComEd that it would reside in the premises.

Second, GBC's communications with ComEd were no different than those of every other applicant for ComEd service that will be used by another, such as persons establishing service for their parents, children, employees, spouses, friends, etc. Very simply, ComEd does not ask for the identity of person who will reside in the premises. There is no evidence in the record that GBC deceived ComEd any more than all other customers who establish and pay for service used by another.

¹ Bell Dep. Tr. 15, 17.

The Order, however, assumes that not only did GBC deceive ComEd into establishing its accounts under the UAP, but that it must be treated differently from all other customers who establish and pay for the accounts of others because those customers did not deceive ComEd. There is absolutely nothing in the record to support that finding.

The Order also incorrectly states that GBC does not assume responsibility for payment:

As previously stated, Grace Bible's program allows it to give a utility the false impression that it intends to assume responsibility for payment of utility bills, without actually taking responsibility for such payment. Grace Bible does not actually assume responsibility for an account, even though it opens up an account on behalf of an end-user (program participant) using its own name, address and F.E.I.N number. Such deception violates Section 16-102 of the Act.

Order at 11.

That finding is not based on the record or ComEd's tariffs and process. As the entity that applies for service and agrees to pay for it, GBC does assume liability for each account. While UAP participants provide GBC with money orders to pay their bills, in the cases where a UAP participant fails to provide GBC with a money order for their utility service, GBC pays for it.² As the party that agreed to pay for service, GBC would be subject to ComEd's rights to collect payment for services.

The Order finds that the UAP reduces the protections afforded customers of ComEd by inserting GBC between them and ComEd. These "reduced protections" include the possibility that GBC fails to forward a customer's payment to ComEd, the customer wishes to challenge a bill calculation, or ComEd needs to telephone the customer in order to read a meter or for safety reasons. Order at 11. While these are all theoretical possibilities, they are equally theoretical possibilities for every other situation where a customer establishes and pays for service used by another. Yet with no basis in the record, the Commission assumes that only GBC customers have

² Bell Dep. pp. 65, 86, 211-12.

lost protections, claiming that "[t]he facts here are truly unique." Order at 11. They are not unique. Nevertheless, the Order refuses to admit that obvious fact because of the disruption it would cause for other ComEd customers doing exactly what GBC is doing.

D. The Order Violates the Equal Protection Clause by Imposing A Rule on GBC That The Commission States Will Not Be Imposed On Other Customers.

The Order violates the equal protection clause of the 14th Amendment to the United States Constitution when it explicitly states that its ruling applies to GBC and GBC alone and that the Commission will not prevent other customers from establishing service at a premises where they are not the user of service.

In so finding, 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 at the premises in question in order to become a customer at those premises.

Order at 7.

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.

Order at 11.

The Commission justifies this disparate treatment by pretending that ComEd did not request such a finding. "ComEd did not argue and the Commission specifically does not rule in this Order that an applicant for service must reside in the premises in question in order to become a customer at those premises." Order at 12.

As noted above, however, that is exactly what ComEd requested in its Compliant. ComEd never wavered in this case, making the same request in its final pleadings.³

³ Motion for Summary Judgment, para. 5 and 6, ComEd Brief in Support of Motion for Summary Judgment, p. 8-9

The Commission next justifies this disparate treatment by pretending that GBC has somehow deceived ComEd while other customers who pay the bills of another person that is the user of electricity do not. As noted above, there is nothing in the record to support that finding. GBC concealed the fact that it was not the user of electricity only in the sense that ComEd's employees do not ask if a person calling to establish service will also be residing at the premises. Does the Commission believe that all persons paying for service at a premises where they do not reside have informed ComEd of the arrangement? Of course they have not. If they did, then ComEd would have enforced the rule it requested in its Complaint that "under the PUA and ComEd's tariffs, ComEd is not required to provide retail utility services to GBC at premises where it is not the end-user." ComEd Complaint, para 33. Put another way, **every** applicant for service who does not reside in the premises deceives ComEd. If they did not, then ComEd would not provide them with service. In fact, by providing details of the UAP on its publicly available web site, by paying bills with UAP participants' money orders and by having as many as 60 residential accounts, GBC makes no effort to hide the nature of the UAP from ComEd. No customer paying the bills for another is as open as GBC.

Finally, the Commission listed a series of what it calls "peculiarities" of the UAP, apparently in an effort to distinguish GBC from other customers that establish accounts and pay for service of another. Order at 10-11. None of these items, however, violates any ComEd tariff, Illinois statute, Commission rule or order. Therefore, they do not justify treating GBC differently from other customers that do not reside in the premises where they are the customer.

CONCLUSION

For the reasons provided above, the Commission should grant this Application for Rehearing.

Dated: June 10, 2016

Respectfully submitted,
Grace Bible Center

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of Grace Bible Center's Application for Rehearing has been served upon the parties reported by the Clerk of the Commission as being on the service list of this docket, on the 10th day of June, 2016, by electronic mail.

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