

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

WOODMEN OF THE WORLDFLIFE )  
INSURANCE SOCIETY, )  
 )  
Complainant, )  
vs. )  
 )  
COMMONWEALTH EDISON COMPANY, )  
 )  
Respondent. )  
 )  
Complaint as to billings and charges in )  
LaGrange Park, Illinois. )

No.: 00-0179

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ILLINOIS  
COMMERCE COMMISSION

**COMPLAINANT'S MEMORANDUM IN RESPONSE TO  
MOTION TO DISMISS PORTIONS OF THE COMPLAINT**

Woodmen of the World Life Insurance Society ("*Woodmen*"), by its attorneys, hereby submits this Response to Commonwealth Edison's ("*ComEd*") Motion to Dismiss Portions of the Woodmen's Complaint as time-barred. As set forth more fully below, ComEd's Motion should be denied because: (i) Section 9-101 of the Public Utilities Act (the "*Act*"), 220 ILCS 5/9-101, is applicable to this dispute inasmuch as Woodmen did not receive certain electric service for which it was billed and the Commission's broad power under Section 10-110 of the Act (220 ILCS 5/10-110) to remedy that violation is not subject to the statutes of limitations cited by ComEd and (ii) alternatively, in the event that Section 9-252.1 (220 ILCS 5/9-252.1) governs this dispute, the limitations period in that section did not begin to accrue until January, 2000, when Woodmen actually discovered the billing errors.

**FACTUAL BACKGROUND**

Woodmen owns a shopping center located in LaGrange Park, Illinois, known as Village Market. Respondent ComEd provides electric service to the Village Market and its tenants. See Complaint, ¶4. ComEd billed Woodmen, through its management agent TB&Z Realty and

Management Corporation (“TB&Z”), under two separate accounts designated Village Market South (“VM-South”) and Village Market North (“VM-North”) (or collectively the “Village Market Accounts”). ComEd also issued bills directly to the tenants of Village Market for their electric service based on sub-meters that measured the individual usage of those tenants. Complaint, ¶¶8-9. Although ComEd received payments of those electric bills from tenants, it also billed the Village Market Accounts for the tenants’ electric service. Complaint ¶¶9-10. In other words, the Village Market Accounts were billed for electric service that they did not receive and ComEd unjustly obtained a double recovery for that service. *Id.*

In or about July, 1999, ComEd issued adjusted bills to VM-South and VM-Market covering all or part of a twenty-one period between May 1996 through February 19, 1998 (the “Adjustment Period”), which contained various adjustments which purported to partially address the above problem and certain other issues. The adjusted bills, however, contained little or no explanation or back-up detail. *See* Complaint ¶ 6. Because Woodmen and its management agent, TB&Z, were unable to understand the adjusted bills and determine their accuracy, they engaged Schedin & Associates (“Schedin”), a utility consultant, to analyze the invoices and issue a report detailing its findings (the “Schedin Report”). *See* Complaint, ¶7. The Schedin Report, received by Woodmen in January, 2000, revealed the above problems and certain other flaws in the adjustments made by ComEd. Complaint, ¶11. Based on the adjusted bills issued by ComEd in July 1999 and further investigation, Schedin concluded that ComEd had been erroneously billing Woodmen for tenant usage both during the Adjustment Period and during earlier periods going back to 1960.<sup>1</sup>

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<sup>1</sup> Although the adjusted bills issued by ComEd for VM-South purported to give a billing credit of \$33,959 for the Adjustment Period, the Schedin Report concluded that the credit understates the total credit that ComEd owes Woodmen due to a variety of factors set forth in that Report. Based upon information provided in ComEd’s adjusted bills and the further analysis of the Schedin Report, between 1960 and 1996, ComEd charged to the VM-South and VM-North accounts at least \$39,726 per year for electrical service received and paid for by tenants. *See* Complaint, ¶13, Ex. B., p. 2.

As a result of the unjust billing practices described above, Woodmen brought the instant complaint, alleging that ComEd had engaged in numerous violations of the Illinois Public Utilities Act.<sup>2</sup> ComEd has moved to dismiss a portion of Woodmen's Complaint, arguing that the limitations period contained in the predecessor of Section 9-252 of the Public Utilities Act (amended January 1, 1994) operates to bar Woodmen's recovery for billing claims arising prior to January 1, 1992. Response at 5. For the reasons discussed below, the limitations period relied on by ComEd does not bar Woodmen's Complaint and ComEd's Motion therefore should be denied.

### ARGUMENT

#### I. STANDARDS ON MOTION TO DISMISS

All well-pled facts in a Complaint are admitted with a Motion to Dismiss, *Wheeler v. Caterpillar Tractor Co.*, 108 Ill.2d 502, 505, 485 N.E.2d 374 (1985), and all conflicts in testimony must be resolved in the plaintiff's favor. *Chef's No. 4, Inc. v. City of Chicago*, 117 Ill. App. 3d 410 (1<sup>st</sup> Dist. 1983). A motion to dismiss under 2-615 for failure to state a cause of action should not be granted unless it clearly appears no set of facts could be proven under the pleadings which would entitle the plaintiff to relief. *Krautstrunk v. Chicago Housing Authority*, 95 Ill. App. 3d 529, 534, 420 N.E.2d 429 (1<sup>st</sup> Dist. 1981). Under those standards, ComEd's Motion should be denied.

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<sup>2</sup> In addition to billing Woodmen for electric service provided and billed to the tenants, the Complaint attacks certain debits in the July, 1999 adjusted bills on the grounds that: (a) the debits constitute estimated bills for periods well in excess of two consecutive months in violation of 83 Ill. Adm. Code §280.80; (b) the debits allegedly cover service that allegedly had been provided but had not been billed for over two years in violation of 83 Ill. Adm. Code §280.100; (c) the debits that are not supported by actual metering data; and (d) ComEd's estimation methods are incorrect. The Complaint also addresses ComEd's failure to install a sub-meter for a tenant (Mid-City Bank) and the failure to credit VM-North for that tenant's usage. See Complaint, ¶11. Those claims are not addressed in ComEd's motion.

## II. SECTION 9-101 OF THE PUBLIC UTILITIES ACT GOVERNS COMED'S BILLING IMPROPRIETIES.

In its Motion, ComEd has argued that the limitations period contained in the predecessor of Section 9-252 of the Act operates to bar certain portions of Woodmen's claims. *See* Motion at 5-6. In particular, ComEd asserts that Woodmen's claims covering the time period prior to January 1, 1992 are time-barred. ComEd acknowledges that a claim seeking a refund for overcharges under Section 9-252.1 has a limitations period which does not expire until two years after the customer has knowledge of its claim. ComEd asserts, however, that prior to the January 1, 1994 effective date of Section 9-252.1, the only relevant statute of limitation was contained in the then-existing version of Section 9-252. ComEd argues that the limitations period in that provision automatically expired two years after the electric service was provided. According to ComEd, Woodmen cannot maintain any portion of its claim arising more than two years prior to January 1, 1994 (*i.e.* prior to January 1, 1992).

ComEd's argument is flawed because it incorrectly assumes that Woodmen's claims arise exclusively under Sections 9-252 or 9-252.1. To the contrary, Section 9-252 explicitly provides that it does not preclude other rights and remedies under the Act. Further, both Sections 9-252 and 9-252.1 come into play only where a utility *has rendered service to a customer*, and then charged excessive or discriminatory rates or overcharged for its service. Section 9-101 of the Act ("*Section 9-101*") appropriately governs Woodmen's claims for recovery because it *never received the electric service for which it was billed* and because ComEd did collect billings from the tenants who received the service. Under Section 9-101, none of Woodmen's claims are barred.

Section 9-101 provides in relevant part:

All rates or other charges made, demanded or received ... for any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge made, demanded or received for ... such service is hereby prohibited and declared unlawful.... *Id.*

The scope of Section 9-101 is far broader than the scope of Section 9-252 (which addresses “excessive or unjustly discriminatory rates”) or Section 9-252.1 (which addresses “errors in charging more than the published rate or in measuring the quantity or volume of service provided”). Clearly, ComEd’s double-billing of electric service provided to and paid for by other entities besides Woodmen is an unjust and unreasonable billing practice proscribed by Section 9-101. Accordingly, a remedy should be afforded to Woodmen notwithstanding any limitations period in either Section 9-252 or 9-252.1.

The Illinois Appellate Court for the First District expressly rejected the contention that Section 9-252 or 9-252.1 are applicable where a utility has charged for service never rendered to the entity charged. *See Citizens Utilities Co. of Illinois v. Illinois Commerce Com’n*, 157 Ill. App. 3d 201, 206, 510 N.E.2d 52, 56 (1st Dist. 1987) *appeal denied*, 116 Ill.2d 549, 515 N.E.2d 103 (1987). The Appellate Court held that Section 9-101 is the governing section in those instances in which a complainant never received service for which it was billed. *Id.*

In *Citizens Utilities*, the defendant utility billed the plaintiff for seven years for sewer service which it never received. 157 Ill. App., 3d at 203, 510 N.E.2d at 54. Under the authority granted to it by Section 9-101, the Commission directed the utility to cease charging unjust rates, and to refund all charges paid, with interest. *Id.* As here, the utility argued that this remedy was inappropriate, and that the refunds should be time-barred as an excessive rate claim under Section 9-252. 157 Ill. App. 3d at 205-06, 510 N.E.2d at 55-56.<sup>3</sup> However, the Illinois Court of Appeals rejected the utility’s argument that Section 9-252 was implicated, where a utility had billed for service not furnished. *Id.* Instead, the Appellate Court affirmed the Commission’s ruling which found the utility to have violated Section 9-101. 157 Ill. App. 3d at 207, 510 N.E.2d at 56.

The complaint here, however, does not involve allegations of excessive rates or incorrect billings to a customer by a utility for services rendered. Instead, it

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<sup>3</sup> Section 9-252 was formerly called Section 72, while Section 9-101 was Section 32.

involves findings that for seven years a utility charged a non-customer for services which were never rendered. The allegations challenge a public utility's unjust conduct, invoking the Commission's power under section [Section 101] to order the cessation of violations of the Act. There is no challenge to the reasonableness of rates charged between 1975 and 1982. This case differs drastically, therefore, from the typical [Section 252] excessive rate case. *Id.* at 206, 510 N.E.2d at 56.

Thus, the Court held that Section 9-252's two-year statute of limitations was "irrelevant" to the plaintiff's claims. 157 Ill. App. 3d at 208, 510 N.E.2d at 57.

Additionally, the *Citizens Utilities* court found that the Commission had broad power to provide the complainant with a remedy that included the disgorgement of the seven years' payments of unjust charges. 157 Ill. App. 3d at 207, 510 N.E.2d at 57. In doing so, the Court relied on Section 10-110 (220 ILCS §5/10-110) and held that nothing in the Act limited or restricted the power of the Commission to take such action as it may deem necessary in connection with the matters before it. *Id.*; see also *People ex rel. Hartigan v. Illinois Commerce Com'n*, 148 Ill.2d 348, 394, 592 N.E.2d 1066, 1087 (1992)(Supreme Court held that the Commission could authorize a refund of illegal rates); *Ferndale Heights Utility Co. v. Illinois Commerce Commission*, 112 Ill. App. 3d 175, 445 N.E.2d 334 (1982).

The Commission has followed *Citizens Utilities* on several occasions since 1987, holding that Section 9-101 is applicable, rather than Section 9-252, where the utility has charged a person for service never received. See *Little Company of Mary Hospital v. Illinois Bell Telephone Co.*, No. 84-0553, 1990 Ill. PUC LEXIS 184 (April 18, 1990); *William Sloss, President Basement Flood Protector, Inc. v. Commonwealth Edison Co.*, No. 90-0394, 1991 Ill. PUC LEXIS 797 (December 18, 1991).

In fact, ComEd should be keenly aware of the rule that Sections 9-252 or 9-252.1 are inapplicable to claims that a utility has charged for services not provided, because it lost on this very issue in 1991, in the *Sloss* case, *supra*. In the *Sloss* case, ComEd had engaged in a billing practice which the Commission found unreasonable, because it subjected the complainant to

higher "demand" billings, without adequate notice or information. The Commission rejected ComEd's argument that Section 9-252 provided the exclusive remedy, and followed *Citizens Utilities* to hold that the Section 9-101 is applicable where a utility has charged a complainant for services not provided. *Sloss*, 1991 Ill. PUC LEXIS 797 at \*20-22. Thus, the Commission ordered a refund to Mr. Sloss and his company under its authority to order a utility to cease its violations of the Act with unjust conduct. *Id.* at \*22-23.

Similarly, in *Little Company*, the Commission made the distinction between a case where a utility has excessively charged, and where it has charged for services it never provided. *Little Company*, 1990 Ill. PUC LEXIS at \*25-26. In *Little Company*, certain of the billing errors were the result of excessive charges for services provided (invoking Section 9-252), while in other cases, the hospital was charged, yet the service was never provided, because the phone company had failed to connect certain equipment so that the phone system could function (invoking Section 9-101). *Id.* The Commission held that the complainant should recover a refund from the utility for the charges paid to it for services never provided. *Id.* (citing *Citizens Utilities*).

In light of the *Citizens Utilities* case and its progeny, Woodmen has viable claims under Section 9-101 because ComEd has billed it for electric service it never received. ComEd billed tenants directly for that service and received payment. As set forth above, Section 9-101 authorizes the Commission to craft an equitable remedy that will address ComEd's unfair practices which, in effect, has yielded it a double-billing for the same service. The fact pattern at issue simply does not implicate Sections 9-252 or 9-252.1, and accordingly, ComEd's Motion to Dismiss Woodmen's claims based on the time limitation in the predecessor of Section 9-252 should be denied.

**III. ALTERNATIVELY, THE STATUTE OF LIMITATIONS IN SECTION 9-252.1 PERMITS WOODMEN TO RECOVER FOR COMED'S CONTINUING BILLING IMPROPRIETIES.**

Alternatively, should the Commission determine that Section 9-101 does not govern Woodmen's claims, then Section 9-252.1 should be applied rather than Section 9-252. As noted above, Section 9-252.1 of the Public Utilities Act addresses *overcharges*, while Section 9-252 addresses *excessive rates*. Section 9-252 addresses "excessive or unjustly discriminatory" amounts for services. Section 9-252.1 provides:

When a customer pays a bill as submitted by a public utility and the billing is later found to be incorrect due to an error either *in charging more than the published rate or in measuring the quantity or volume of service provided*, the utility shall refund the overcharge with interest from the date of overpayment at the legal rate or at a rate prescribed by rule of the Commission. *See 220 ILCS §5/9-252.1 (emphasis added).*

Woodmen's Complaint does not allege that an excessive rate has been charged to Woodmen in the sense contemplated by section 9-252. Rather, it alleges that ComEd charged Woodmen for services provided directly to the tenants, which service was never provided to Woodmen.

To the extent, however, that Section 9-252.1 is governs Woodmen's claim, that Section permits a complainant two years after having actual knowledge of an overcharge to file a claim. Section 9-252.1 requires that "[a]ny 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. Unlike statutes of limitations which require constructive knowledge, Section 9-252.1 delays running of the statute until the potential claimant has actual knowledge of a utility's wrongdoing.

The Commission has interpreted Section 9-252.1 to mean that a cause of action does not accrue, and the statute does not begin to run, until a complainant discovers the overcharge. *Chebanse Grain and Lumber Co. v. Northern Illinois Gas Co.*, Case No. 97-0079, 1997 Ill. PUC LEXIS 821 at \*13-14 (December 3, 1997). The *Chebanese* decision also demonstrates that

Section 9-252.1 should be applied expansively to cover claims that commenced before its effective date so long as a portion of the claims accrue after that effective date.

In *Chebanse*, the erroneous billings occurred in December 1993, and January 1994. *Id.* at \*13. Section 9-252.1 took effect on January 1, 1994. The Commission rejected the utility's arguments that the old Section 9-252 two-year statute of limitations should bar refunds for the billing errors prior to January 1, 1994. The Commission determined that Section 9-252.1 was applicable to *all* of the complainant's claims because part of the cause of action accrued after the date of the effective date of the statute. *Chebanse* at \*13-14. "[I]t is a well settled proposition of law that statutes which provide additional protection to litigants are to be, where possible, construed as applicable to a controversy." *Id.* Thus, the Commission held that Section 9-252.1's more lenient discovery rules applied to the entire controversy. <sup>4</sup>

This approach is consistent with the Illinois decisions which have adopted the "continuing wrong" doctrine. This doctrine provides that a statute of limitations will not run against a continuing or repeated tort until the date of the last injury. *See, e.g., People ex rel. Hartigan v. Moore*, 143 Ill. App. 3d 410, 412-13, 493 N.E.2d 85, 86-87 (1<sup>st</sup> Dist. 1986)(the statute of limitations for a conspiracy case did not begin to until the last overt action in furtherance of the conspiracy triggered the statute), *Field v. First National Bank of Harrisburg*, 249 Ill. App. 3d 822, 825, 619 N.E.2d 1296, 1299 (5<sup>th</sup> Dist. 1993), *Raabe v. Messi, an Evangelical Lutheran Church*, 245 Ill. App. 3d 539, 543-44, 615 N.E.2d 15, 18-19 (3<sup>rd</sup> Dist. 1993).

In *Field*, the court applied the continuing wrong doctrine to a claim seeking "to recover possession of personal property ... for the detention and conversion thereof." The plaintiff

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<sup>4</sup> Although the Commission ultimately held that the *Chebanse* complaint's claims were time-barred, the facts of that case are distinguishable from the instant case.

alleged a “four-year course of conduct in which ... defendants allowed restrictively endorsed pension checks for Raymond E. Field to be deposited into accounts that did not bear his name.” *Field*, 249 N.E.2d at 825, 619 N.E.2d at 1298. The court held that this course of conduct constituted a single transaction, and that therefore, the statute of limitations did not begin to run until the date the last check was cashed.

Similarly, in *Raabe*, a landowner brought nuisance claims for reported flooding of his land. The trial court applied the nuisance statute of limitations to bar the plaintiffs’ claims. However, the Appellate Court reversed, holding that the continuing wrong doctrine tolled the statute of limitations until the last episode of flooding. *Raabe*, 245 Ill. App. 3d at 543-44, 615 N.E.2d at 18-19 (citing *Meyer v. Kissner*, 149 Ill.2d 1, 171, 594 N.E.2d 336 (1992)). The *Raabe* court stated:

In the case before us, plaintiffs have alleged that the parking lot constructed by defendants caused a wrongful diversion of water upon plaintiffs’ land ‘on June 16, 1990, and prior thereto.’ Deposition evidence discloses repeated episodes of flooding on plaintiffs’ property on an annual basis with the quantity of water varying from time to time. Applying the ruling in *Meyers v. Kissner*, we conclude that defendants have created a continuing nuisance with recurring injuries to plaintiffs’ property, and accordingly the plaintiffs’ cause of action is not barred by either the four year or the five year statute of limitations. Instead, plaintiffs’ cause of action arises each time flooding occurs, and plaintiffs’ may select their own time for bringing suit. *Id.* at 44, 615 N.E.2d at 19.

Under the continuing wrong doctrine and *Chebanse*, no portion of Woodmen’s claim should be time-barred because it is based on a single and continuous cause of conduct. The pre-1992 service are not separate claims that were revived upon the enactment of Section 9-252.1, as ComEd suggests. Rather, ComEd’s actions comprise continuing and ongoing course of conduct analogous to that described in *Field* that gave rise to single on-going claim. Accordingly, as in *Chebanse*, the Commission should treat ComEd’s billing improprieties as a single violation to and which accrued after the enactment of Section 9-252.1 and was timely filed under that provision as a “continuing wrong.”

ComEd argues that it would be unconstitutional to apply Section 9-252.1 retroactively, citing *M.E.H. v. L.H.*, 177 Ill.2d 207, 685, N.E.2d 335 (1997) and *Clay v. Kuh*, 189 Ill.2d 604, 727 N.E.2d 217 (2000). However, those cases are readily distinguishable. Under the facts of the instant case, the statute of limitations should be tolled under the “continuing wrong” doctrine; in *M.E.H.* and *Clay*, was not at play.

In *M.E.H.*, the plaintiffs brought personal injury actions based on childhood sexual abuse alleged to have stopped 26 and 27 years previously. The *M.E.H.* court found it significant that the legislature intended, with its enactment of the twelve year statute of limitations, to stop plaintiffs from bringing an action more than twelve years after the plaintiff reached the age of majority. *M.E.H.*, 177 Ill.2d at 217, 685 N.E.2d at 340. There were no allegations that the *M.E.H.* plaintiffs had been injured *after* the date of the amendment to the statute.

In *Clay*, the facts were also distinguishable, since no facts implicated the discovery rule. There also, the plaintiff brought claims more than ten years old. However, the Court refused to toll the statute of limitations, because although plaintiff argued that she was not aware of the extent of the injuries caused, she “was always aware of the misconduct charged.” *Clay*, 189 Ill.2d at 603, 727 N.E.2d at 221. Thus, plaintiff had sufficient information about her injury to bring a claim. The court expressly declined to rule on whether the discovery rule would be implicated had she alleged a repressed memory of the abuse. *Id.* Further, the plaintiff’s injuries did not constitute a continuing wrong; the abuse began in 1964, and presumably ended by 1982, when she turned 18. Plaintiff did not bring an action until 1996. There was no discussion as to whether plaintiff’s cause of action accrued after the amendment of the statute of limitations. *Id.* at 603. 727 N.E.2d at 220.

In contrast to the facts in *Clay and M.E.H.*, ComEd’s incorrect billing was a continuing violation and thus delayed the accrual date for Woodmen’s claims until the date of the last billing

impropriety. The billing errors have continued beyond the enactment of Section 9-252.1, and therefore, all of Woodmen's claims are subject to the discovery rule contained therein. In contrast to *Clay* also, Woodmen did not discover ComEd's misconduct until July, 1999 at the earliest. Thus, whether the Commission applies Section 9-109, Section 9-252 or Section 9-252.1, the statute of limitations did not begin to run until the date of the last billing error.

ComEd is also incorrect in arguing that a defendant always has a vested right in a statute of limitations that is amended. Such an argument ignores the numerous Illinois decisions that have routinely applied a newly-amended statute of limitations retroactively, in a variety of situations. *See, e.g., Orlicki v. McCarthy*, 4 Ill.2d 342, 354, 122 N.E.2d 513, 519 (1954) (newly amended statute of limitations of the Liquor Control Act applied retroactively); *Magidi v. Palmer*, 175 Ill. App. 3d 679, 682, 530 N.E.2d 66, 68 (2<sup>d</sup> Dist. 1988)(statute of limitations in custody case applied retroactively); *Spalding v. White*, 173 Ill. 127, 130, 50 N.E. 224 (1898)(statute fixing a time limit for contesting wills should be retroactively applied); *Diamond T Motor Co. v. Industrial Commission*, 378 Ill. 203, 37 N.E.2d 782 (1941)(Illinois Supreme Court stated that time limitation in Workers Compensation Act is "procedural", and therefore should be retroactively applied.)

The Illinois Supreme Court case of *Orlicki* is particularly on-point. In that case, the Court held that the statute of limitations for instituting suits under the Liquor Control Act should apply retroactively. The *Orlicki* court noted a long line of cases in Illinois allowing for retroactive application of statutes of limitations. It also held that there was substantial precedent in Illinois holding that such time statutes are *procedural* in character. *Orlicki*, 4 Ill. 2d at 353-54, 122 N.E.2d at 513 (citing *Smolen v. Industrial Comm.*, 324 Ill., 32 154 N.E.2d 441 (1926); *McQueen v. Connor*, 53 N.E.2d 435, 436, (1944); 385 Ill. 455, 457; *Diamond T Motor Co. v. Industrial Comm*, 378 Ill. 203, 37 N.E. 2d 782 (1941); *Duquoin Township School District, No.*

*100 v. Industrial Comm*, 329 Ill. 543, 161 N.E. 2d 108 (1928); *Chicago Board of Underwriters v. Industrial Comm.*, 332 Ill. 611, 164 N.E. 2d 164 (1928)<sup>5</sup> Where a time limitation is procedural, a party has no vested right in that time limitation, but rather, the statute of limitations in place when the court's jurisdiction is invoked governs. *Id.*

The *Orlicki* court also noted that retroactive application of the newly amended statute of limitations was proper where the liability imposed by the Liquor Control Act was of statutory origin. *Id.* at 351, 122 N.E.2d at 517 (citing *Forut v. DeLazzer*, 348 Ill. App. 191, 108 N.E.2d 599). Therefore, where the legislature creates the rights, the legislature has the power to change them. Therefore, the statute of limitations in force when the court's jurisdiction is invoked is applicable.

Here, Section 9-252.1's time limitations are procedural in nature. The Illinois legislature has created the rights under the Public Utilities Act upon which Woodmen is now suing. Where the Illinois legislature has the power to create rights under the Public Utilities Act, and create the respective statutes of limitations which govern those rights and their remedies, it has the power to amend those statutes of limitations, and utilities shall not have vested rights in such procedural time limitations. Thus, ComEd should have no vested right in a previous statute of limitations, but rather is subject to the statute of limitations in place at the time that Woodmen's cause of action accrued.

Thus, should the Commission decline to find that this case is governed by Section 9-101, the Commission should find that ComEd's pattern of wrongdoing constitutes one continuous claim which accrued after the enactment of Section 9-252.1, and that Woodmen's entire Section 9-252.1 claim was filed timely. That result is supported by the continuing wrong doctrine and

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<sup>5</sup> Although *Orlicki* involved a statute of limitations which was amended to be shortened, the same logic should apply to statutes of limitations which are lengthened. Certainly, had the Illinois legislature amended Section 9-252.1 to shorten the statute of limitations, ComEd would be vigorously arguing for the retroactive application of the newly-shortened statute of limitations.

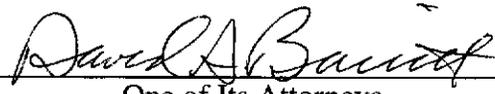
the approach in *Chebanse*. Because that claim did not accrue until January, 2000, Woodmen should be permitted to recover for the portions of the claims arising prior to 1992.

**CONCLUSION**

For the foregoing reasons, no portion of Woodmen's claims are time-barred. Accordingly, Woodmen respectfully requests that the Hearing Examiner deny ComEd's Motion to Dismiss Portions of the Complaint.

Respectfully submitted,

WOODMEN OF THE WORLD LIFE  
INSURANCE SOCIETY

By   
One of Its Attorneys

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Joanna C. Kitto  
CHAPMAN AND CUTLER  
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(312) 845-3000

Dated: July 21, 2000

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

WOODMEN OF THE WORLDFIFE	)	
INSURANCE SOCIETY,	)	
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COMMONWEALTH EDISON COMPANY,	)	
	)	
Respondent.	)	
	)	
Complaint as to billings and charges in	)	
LaGrange Park, Illinois.	)	

**NOTICE OF FILING**

To: Paul F. Hanzlik  
Robert C. Feldmeier  
Martin J. Bishop  
HOPKINS & SUTTER  
Three First National Plaza  
Suite 4100  
Chicago, Illinois 60602

PLEASE TAKE NOTICE that on this 21<sup>st</sup> day of July, 2000, I have sent via regular mail for filing with the Chief Clerk of the Illinois Commerce Commission, 527 E. Capitol Avenue, Springfield, Illinois 62706, an original and three copies of the Complaint's Memorandum in Response to Motion to Dismiss Portions of the Complaint, a copy of which is hereby served upon you.

Dated: July 21, 2000



David S. Barritt  
Joanna C. Kitto  
CHAPMAN AND CUTLER  
111 West Monroe Street  
Chicago, Illinois 60603-4080  
(312) 845-3000

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, certifies that he caused a copy of the foregoing **Complainant's Memorandum in Response to Motion to Dismiss Portions of the Complaint**, to be served upon:

Paul F. Hanzlik  
Robert C. Feldmeier  
Martin J. Bishop  
Hopkins & Sutter  
Three First National Plaza  
Suite 4100  
Chicago, Illinois 60602-4502

Erin M. O'Connell-Diaz, Hearing Examiner  
Illinois Commerce Commission  
160 North LaSalle Street  
Suite C-800  
Chicago, Illinois 60601-3104

via messenger, before the hour of 5:00 p.m. on July 21, 2000.

  
\_\_\_\_\_  
David S. Barritt