

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

Robin HAWKINS, both individually)
and d/b/a ROBIN’S NEST, a sole)
proprietorship, Robert DILLON, an)
individual, and GOT IT MAID, INC.,)
an Illinois business corporation, on behalf)
of themselves and all others similarly)
situated,)

Plaintiffs,)

v.)

COMMONWEALTH EDISON)
COMPANY, an Illinois corporation,)

Defendant.)

2013CH09126
CALENDAR/ROOM 06
TIME 00:00
Class Action

Case No.

JURY DEMANDED

CLASS ACTION COMPLAINT

Robin Hawkins, individually and d/b/a Robin’s Nest, a sole proprietorship, Robert Dillon, an individual, and Got It Maid, Inc., an Illinois business corporation (collectively, “Plaintiffs”), on behalf of themselves and all electricity consumers in the service territory of Commonwealth Edison Company (“ComEd”) that pay delivery services charges to ComEd, complain against ComEd, as follows:

NATURE OF THE CASE

1. Plaintiffs bring this action, individually and on behalf of all electricity consumers located in the service territory of ComEd that pay delivery services charges to ComEd, as Class Members, for ComEd’s violation of the Illinois Public Utilities Act, 220 ILCS 5/1-101 *et seq.* (the “PUA”).

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2. In 2011, the Illinois General Assembly enacted the Energy Infrastructure Modernization Act (220 ILCS 5/16-107.5, 16-108.5, 16-108.6, 16-108.7 and 16-111.5B) (the “Smart Grid Act”), which amended the PUA to encourage electric utilities to invest billions of dollars to modernize their electric systems. The investments contemplated by the Smart Grid Act include Smart Grid Advanced Metering Infrastructure (“Smart Meter Infrastructure”), including installation of smart meters for residential, business and governmental customers. In exchange for making these investments, the Smart Grid Act allows electric utilities to use a formula rate process, subject to approval of the Illinois Commerce Commission (the “ICC”), as opposed to traditional ratemaking proceedings before the ICC.

3. ComEd chose to participate in the process established by the Smart Grid Act. At ComEd’s request, the ICC entered a final order on June 22, 2012, approving ComEd’s deployment of Smart Meter Infrastructure, including smart meters, and adopted the deployment schedule that ComEd had sought. Under this schedule, ComEd was to begin installation of smart meters in September 2012. Order, ICC Docket No. 12-0298, June 22, 2012 (the “Smart Meter Deployment Order”).

4. After the ICC entered its Smart Meter Deployment Order, ComEd unilaterally decided that it would not deploy smart meters on the schedule that it had proposed and the ICC had ordered, but would instead delay the beginning of Smart Meter Infrastructure deployment from September 2012 to January 2015, almost 2-1/2 years later. ComEd was never granted a stay of the ICC's Smart Meter Deployment Order by the ICC or a court. Therefore, the ICC's Smart Meter Deployment Order, with the required schedule for smart meter installation beginning in September 2012, remained in full force and effect. Indeed, on December 5, 2012, the ICC specifically found that ComEd had violated the Smart Meter Deployment Order by unilaterally delaying its deployment of Smart Meter Infrastructure, including installation of smart meters. Order on Rehearing, ICC Docket No. 12-0298, December 5, 2012, pg. 33.

5. According to ComEd's own expert testimony, ComEd's unilateral decision to delay deployment of Smart Meter Infrastructure, in defiance of the ICC's Smart Meter Deployment Order, has damaged ComEd's customers by \$182,000,000. ICC Docket No. 12-0298, Direct Testimony on Rehearing of ComEd Witness Mr. A. Trump, ComEd Exh. 17.0 REV, pg. 11, lines 230-36.

PARTIES

6. Plaintiff Robin Hawkins is an individual whose address and service location is 4341 South Ellis Avenue, Chicago, Illinois. Ms. Hawkins is a delivery services customer of ComEd. She also is owner and operator of Robin's Nest, a sole proprietorship and child care provider licensed by the State of Illinois with a place of business at the same address and service location.

7. Plaintiff Robert Dillon is an individual whose address and service location is 760 Marion Avenue, Highland Park, Illinois. Mr. Dillon is a delivery services customer of ComEd.

8. Plaintiff Got It Maid, Inc. is an Illinois business corporation with an address and service location of 1421 Old Deerfield Road, Highland Park, Illinois. Got It Maid, Inc. is a delivery services customer of ComEd.

9. Plaintiffs and Class Members have residences, businesses or other facilities in the service territory of ComEd, they take electricity delivery service from ComEd, and they are the ultimate beneficiaries of smart meters and other electric system improvements contemplated by the Smart Grid Act. The majority of the Class Members are residents of Cook County, Illinois.

10. ComEd is a public utility under the PUA and is regulated by the ICC pursuant to the PUA. 220 ILCS 5/3-105; 220 ILCS 5/1-102, et seq. ComEd has monopoly control of the delivery of electricity to all residential, business and governmental customers in its Northern Illinois service territory, which borders Iroquois County to the south (roughly along Interstate 80), the Wisconsin border to the north, the Iowa border to the west and the Indiana border to the east. ComEd provides electricity delivery services to approximately 3.8 million customer accounts across northern Illinois, which includes about 70% of the population of Illinois.

11. ComEd's principal place of business is located at 440 South LaSalle Street, Chicago, Cook County, Illinois. ComEd is a wholly-owned subsidiary of Exelon Corporation ("Exelon"), a company whose stock is publicly traded.

JURISDICTION AND VENUE

12. The claims of Plaintiffs and Class Members are made under Section 5-201 of the PUA, which expressly vests the circuit court with jurisdiction of all such claims. 220 ILCS 5/5-201.

13. Venue is proper pursuant to 735 ILCS 2-101 because ComEd is a resident of Cook County, Illinois, the majority of the Class Members are residents of Cook County, Illinois, and the majority of the transactions out of which this cause of action arose occurred in Cook County, Illinois.

FACTUAL AND PROCEDURAL BACKGROUND

The Smart Grid Act

14. The Smart Grid Act became effective on or about October 26, 2011. The Smart Grid Act added several new sections to the Public Utilities Act, namely 220 ILCS 5/16-108.5, 16-108.6, 16-108.7, 16-108.8 and 16-111.5B. ComEd publicly supported the Smart Grid Act and lobbied heavily for its passage.

15. Under the Smart Grid Act, an electric utility may elect to become a “participating utility.” 220 ILCS 5/16-108.5(b). As a participating utility that serves more than one million customers, ComEd must commit to invest \$1.3 billion in electric delivery system upgrades and modernization projects over a five-year period, and an additional \$1.3 billion in Smart Meter Infrastructure over a ten-year period. 220 ILCS 5/16-108.5(b).

16. In exchange for making these investment commitments, the participating utility may avoid a traditional ICC ratemaking case and may instead “elect to recover its delivery services costs through a performance-based formula rate approved by the ICC, which shall specify the cost components that form the basis of the rate charged to customers with sufficient specificity to operate in a standardized manner and be updated annually with transparent information that reflects the utility's actual costs to be recovered during the applicable rate year....” 220 ILCS 5/16-108.5(c). In other words, in exchange for agreeing to make the required investments in Smart Meter Infrastructure

and its electric delivery system, a participating utility obtains a streamlined and more certain procedure for increasing its rates to cover the costs of those investments.

Smart Meter Plan

17. As part of a participating utility's Smart Meter Infrastructure commitment, the Smart Grid Act requires the participating utility to file a Smart Grid Advanced Metering Infrastructure Deployment Plan (a "Smart Meter Plan") with the ICC within 180 days of the effective date of the Smart Grid Act, P.A. 97-0616. 220 ILCS 5/16-108(c).

18. Among other things, ComEd's Smart Meter Plan must provide for the required \$1.3 billion investment in Smart Meter Infrastructure, over a 10-year period, sufficient to provide smart meters to 100% of the delivery service customers in ComEd's entire service territory, and must include a specific deployment schedule and plan. 220 ILCS 5/16-108.6(c)(2) and (c)(3). For the participating utility to continue to obtain the benefits of the streamlined formula rate procedure for raising rates to cover its costs, the ICC must approve the Smart Meter Plan, including the Smart Meter Infrastructure deployment schedule. 220 ILCS 5/16-108.5(b), (c) and 108.6(c).

ComEd's Election to Become a Participating Utility and its Smart Meter Plan

19. On November 8, 2011, ComEd elected to become a participating utility and filed its formula rate tariff with the ICC in order to take advantage of the streamlined procedures for raising rates to cover investment costs. *See* 220 ILCS 5/16-108.5. The ICC opened a proceeding regarding this tariff filing, ICC Docket No. 11-0721 (the "Formula Rate Docket").

20. On April 23, 2012, ComEd filed with the ICC its Verified Petition for Statutory Approval of Smart Grid Advanced Metering Infrastructure Deployment Plan

("ComEd's Smart Meter Plan"). The ICC opened a proceeding regarding this filing, ICC Docket No. 12-0298 (the "Smart Meter Plan Docket").

21. In the Smart Meter Plan Docket, ComEd presented testimony that its Smart Meter Plan would provide positive net benefits to customers in its service area. ICC Docket No. 12-0298, Direct Testimony of Mr. Andrew Trump, ComEd Exhibit 6.0, pg. 5, ll. 99-101. ComEd's testimony explained that all ComEd delivery services customers, and not just customers with smart meters installed on their premises, would receive net benefits from ComEd's Smart Meter Plan. ComEd asserted in its testimony that benefits to its customers from deployment of Smart Meter Infrastructure would include, but would not be limited to, avoided electricity costs, including avoided utility operational costs. See Cost and Benefit Analysis of ComEd Smart Grid Advanced Metering Infrastructure Deployment Plan, ICC Docket No. 12-0298, ComEd Exh. 6.02, pgs. 1-1 to 1-3, copies of which are attached as Exhibit A to this Complaint.

22. On May 29, 2012, the ICC entered its final order (the "Formula Rate Order") in the Formula Rate Docket. A copy of the cover page and pages 177-79 of the ICC's Formula Rate Order is attached to this Complaint as Exhibit B.

23. ComEd, unhappy with the Formula Rate Order, filed an application for rehearing in the Formula Rate Docket on June 5, 2012. On June 22, 2012, the ICC granted in part and denied in part ComEd's application for rehearing in the Formula Rate Docket. The ICC issued its Order on Rehearing in that docket on October 3, 2012. On December 4, 2012, ComEd appealed the ICC's Order on Rehearing in the Formula Rate Docket, commencing Case No. 12-3526 before the Illinois Appellate Court, First District.

The Smart Meter Deployment Order

24. On June 22, 2012, the ICC entered the Smart Meter Deployment Order approving ComEd's Smart Meter Plan in the Smart Meter Docket. A copy of the ICC's

Smart Meter Deployment Order is attached as Exhibit C to this Complaint.

25. The Smart Meter Deployment Order, among other things, approved the deployment schedule that ComEd requested in its Smart Meter Plan. In a separate order issued on June 22, 2012, the ICC denied ComEd's motion to stay the Smart Meter Deployment Order.

ComEd's Decision to Violate the Smart Meter Deployment Order

26. On July 6, 2012, ComEd filed its Verified Application for Rehearing in the Smart Meter Docket (the "Application for Rehearing"), a copy of which is attached as Exhibit D to this Complaint. In the Application for Rehearing, ComEd stated, without waiting for the ICC to even consider its request, that it was going to delay the Smart Meter Infrastructure deployment schedule on its own. ICC Docket No. 12-0298, ComEd Verified Application for Rehearing, pg. 2.

27. On October 3, 2012, ComEd filed a revised Smart Meter Plan ("ComEd's Revised Smart Meter Plan") in the Smart Meter Docket, including a revised deployment plan that reflected substantial delays in rolling out installation of new smart meters in its service territory. The following schedule, submitted by ComEd in the rehearing, reflects those delays:

ComEd Revised AMI Deployment Schedule (000's omitted)

Year	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	TOTAL
Original	131	385	536	531	460	497	448	401	351	289	4029
Revised	0	0	0	500	846	846	700	485	377	275	4029

ICC Docket No. 12-0298, Direct Testimony on Rehearing of ComEd Witness R. O'Toole, ComEd Exhibit 16.0 REVISED, pg. 8, lines 162-67. The cover page and page 8 from this Direct Testimony of Mr. O'Toole is attached hereto as Exhibit E.

28. ComEd claimed that it needed to delay the deployment schedule because of financial constraints imposed by the ICC's Formula Rate Order. Application for

Rehearing, pg. 7. In the Smart Meter Deployment Order, the ICC stated that it expected that ComEd would request rehearing on the deployment schedule and expressly requested ComEd to present evidence showing exactly what those financial difficulties were and why they should lead the ICC to change the Smart Meter Infrastructure deployment schedule. ICC Docket No. 12-0298, Final Order, pgs. 14-15. However, on October 23, 2012, ComEd withdrew all of the testimony it had previously presented to the ICC in connection with its purported financial reasons for wanting to delay deployment of the Smart Meter Infrastructure, and ultimately presented no evidence to support the delay.

29. In addition, ComEd never obtained a stay of enforcement of the Smart Meter Deployment Order, which therefore remained in full force and effect even though rehearing had been granted pursuant to 220 ILCS 5/10-113(a). ComEd had an absolute and unconditional duty to comply with the Smart Meter Deployment Order unless it obtained a stay. 220 ILCS 5/10-113(a).

30. Despite the continuing effectiveness of the Smart Meter Deployment Order, ComEd did not install the 131,000 meters it was required to install in 2012 under that order.

31. On rehearing in the Smart Meter Docket, ComEd's expert witness Mr. A. Trump testified that the delay in ComEd's smart meter installation timeline, from one beginning in September 2012 to one beginning in January 2015, resulted in a reduction of the net present value of benefits to ComEd's customers of \$182 million. Mr. Trump testified as follows in this regard:

More importantly, the revised [smart] meter deployment delays the occurrence of CIM [consumption on inactive meters], UFE [unaccounted for energy] and bad debt. Also, the operational benefits are delayed. Overall there is a \$209 million reduction in total benefits over the 20 year duration of the analysis and expressed on a nominal dollars basis, when comparing the original analysis to today's analysis. These benefit input revisions have an effect of lowering the resulting [net present value] by \$182 million.

ICC Docket No. 12-0298, ComEd Ex. 17.0 REVISED, pg. 11, lines 231-36. The cover page and page 11 from the Direct Testimony of Mr. Trump are attached to this Complaint as Exhibit F. In addition, copies of the cover page and page 5 from ComEd Ex. 17.01, Black & Veatch, Update and Explanation of Changes to the Cost and Benefit Analysis in Support of the Commonwealth Edison (ComEd) AMI Plan Due to Revised Meter Deployment Schedule are attached to this Complaint as Exhibit G.

32. On December 5, 2012 the ICC issued its Order on Rehearing in the Smart Meter Docket (the “Smart Meter Order on Rehearing”). In the Smart Meter Order on Rehearing, the ICC:

- A. Specifically found that ComEd had violated the Smart Meter Deployment Order by delaying its deployment schedule, and that this intentional delay had damaged ComEd customers in the net present value amount of \$182,000,000. ICC Docket No. 12-0298, Smart Meter Order on Rehearing, pgs. 28, 33.
- B. Although the ICC did approve a new deployment schedule in the Order on Rehearing it did so only because of “...the unfortunate reality that ComEd has made compliance with the [Original Smart Meter Deployment Plan] impossible, because some of the implementing dates have already passed.” ICC Docket No. 12-0298, Order on Rehearing, pg. 31.

A copy of the Smart Meter Order on Rehearing is attached to this Complaint as Exhibit H.

33. Nothing in the Smart Grid Act empowers ComEd to ignore the Smart Meter Deployment Order and unilaterally revise the deployment schedule ordered by the

ICC because it deems unsatisfactory the outcome in a separate formula rate proceeding. See ICC Docket 12-0298, Smart Meter Order on Rehearing, pg. 30.

Class Action Allegations

34. The Class consists of all ComEd delivery services customers in its service territory. Plaintiffs and Class Members are all delivery services customers of ComEd located in ComEd's service territory.

35. All Class Members have suffered damages due to ComEd's violation of the Smart Meter Deployment Order because, among other things, they have lost the benefits they would have received had ComEd complied with the deployment schedule ordered by the ICC.

36. The Class Members number approximately 3,800,000. The Class members are so numerous that joinder of all Class Members is impracticable.

37. There are common questions of law and fact for all Class Members, including, but not limited to:

- A. Whether Defendant failed to comply with an order of the ICC issued under authority of the PUA;
- B. Whether Defendant's failure to comply with such order was willful;
- C. Whether Plaintiffs and Class Members have been damaged as a result of Defendant's failure to obey such ICC order, and if so the amount of such damages; and
- D. What amounts Plaintiffs and Class Members are entitled to receive from Defendant in compensatory damages, interest, punitive damages and attorneys' fees and costs.

These common questions predominate over any question that may affect only individual members.

38. Plaintiffs will fairly and adequately protect the interests of the Class Members because, as ComEd delivery services customers, they represent and reflect the

interests of all customers of ComEd that pay delivery services charges.

39. The expense and burden of individual litigation makes it impractical for Class Members to seek redress individually for the wrongful conduct alleged herein. If each individual Class Member were required to bring a separate lawsuit, the resulting multiplicity of proceedings would cause undue hardship and expense for the litigants and the Courts and create the risk of inconsistent rulings that would be contrary to the interests of justice and equity. In addition, the amount at stake for each individual Class Member may make litigation by individuals impractical. Accordingly, a class action is an appropriate method for the fair and efficient adjudication of this controversy.

COUNT I

CIVIL DAMAGES FOR VIOLATION OF PUBLIC UTILITIES ACT

40. Plaintiffs, on behalf of themselves and all electricity customers of Defendant that pay delivery services charges to ComEd, re-allege paragraphs 1 through 39 as though fully set forth in this paragraph.

41. ComEd is regulated in the State of Illinois by the ICC pursuant to the PUA. 220 ILCS 5/1-101 et seq. ComEd must comply with all provisions of the PUA. 220 ILCS 5/5-202.

42. Section 5-101 of the PUA requires ComEd to obey and comply with each and every requirement of the PUA and with every order, decision, rule or regulation of the ICC. 220 ILCS 5/5-101.

43. Section 5-201 of the PUA provides as follows:

In case any public utility shall do, cause to be done or permit to be done any act, matter or thing prohibited, forbidden or declared to be unlawful, or shall omit to do any act, matter or thing required to be done either by any provisions of this Act or any rule, regulation, order or decision of the Commission, issued under authority of this Act, the public utility shall be liable to the persons or corporations affected thereby for all loss, damages or injury caused thereby or resulting therefrom, and if the court shall find

that the act or omission was willful, the court may in addition to the actual damages, award damages for the sake of example and by the way of punishment. An action to recover for such loss, damage or injury may be brought in the circuit court by any person or corporation.

In every case of a recovery of damages by any person or corporation under the provisions of this Section, the plaintiff shall be entitled to a reasonable attorney's fee to be fixed by the court, which fee shall be taxed and collected as part of the costs in the case.

44. In violation of Section 5-101 of the PUA, ComEd ignored the ICC's Smart Meter Deployment Order, unilaterally created its own delayed smart meter implementation schedule and failed to deploy the smart meters ComEd was required to install under the ICC's Smart Meter Deployment Order.

45. Plaintiffs and Class Members have been damaged by ComEd's violation of the Smart Meter Deployment Order. According to ComEd's own expert evidence submitted in connection with the ICC's rehearing of the Smart Meter Deployment Order, Plaintiffs' and Class Members' actual damages are at least \$182,000,000.

46. ComEd's violation of the Smart Meter Deployment Order was willful. As early as July 6, 2012, when ComEd filed its Application for Rehearing of the Smart Meter Deployment Order, ComEd stated that it deliberately planned to violate the deployment schedule contained in that order. ComEd made similar statements in its Form 8-K, filed with the United States Securities and Exchange Commission (the "SEC") on October 3, 2012, which stated that "[a]s a result of the [Formula Rate Docket] Rehearing Order, ComEd has determined that it must delay elements of its grid modernization program under [the Smart Grid Act]. ComEd will delay installation of additional smart meters until 2015; the new deployment schedule is reflected in a filing ComEd made with the ICC on October 3, 2012."¹ ComEd also made repeated statements to the media to the same effect. ComEd made these statements and filings with full

¹ Available at: <http://www.sec.gov/Archives/edgar/data/22606/000119312512416075/d420935d8k.htm>

knowledge that the ICC had not yet issued an order on rehearing in the Smart Grid Docket.

47. Because ComEd's violation of the Smart Meter Deployment Order was willful, Plaintiffs and the Class Members are entitled to the recovery of exemplary damages as provided for under Section 5-201 of the PUA. 220 ILCS 5/5-201. Punitive damages available under Section 5-201 are warranted to deter ComEd from future similar conduct, as well as to deter other public utilities from willfully defying ICC orders.

48. In addition to actual and exemplary damages, Plaintiffs are entitled to reasonable attorneys' fees pursuant to Section 5-201 of the PUA.

JURY DEMAND

Plaintiffs demand trial by jury on all claims.

WHEREFORE, Plaintiffs, on behalf of themselves and all Class Members, request that judgment be entered in their favor and against ComEd for the following:

- A. Actual damages to be proven at trial, but in no event less than \$182,000,000;
- B. Exemplary damages;
- C. Prejudgment interest;
- D. Reasonable attorneys' fees;
- E. Any additional costs; and

F. Such other further relief as the Court may deem just and equitable.

**ROBIN HAWKINS,
ROBIN HAWKINS d/b/a ROBIN'S
NEST,
ROBERT DILLON, AND
GOT IT MAID, INC.**

By: 

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ATTACHMENTS

Exhibit A – ICC Dkt. No. 12-0298, pages 1-1 to 1-3 of Cost and Benefit Analysis of Commonwealth Edison Smart Grid Advanced Metering Infrastructure Deployment Plan (AMI Plan), ComEd Exh. 6.02.

Exhibit B -- ICC Dkt. No.11-0721, Final Order dated May 29, 2012 (Formula Rate Order)

Exhibit C – ICC Dkt. No. 12-0298, Final Order dated June 22, 2012 (Smart Meter Deployment Order)

Exhibit D – ICC Dkt. No. 12-0298, ComEd’s Verified Application for Rehearing in the Smart Meter Docket dated July 6, 2012

Exhibit E – ICC Docket No. 12-0298, Cover page and page 8 from Direct Testimony on Rehearing of ComEd Witness R. O’Toole, ComEd Exhibit 16.0 REVISED

Exhibit F – ICC Docket No. 12-0298, Cover page and page 11 from Direct Testimony of Mr. A. Trump, ComEd Ex. 17.0 REVISED

Exhibit G – ICC Dkt. No. 12-0298, Cover page and page 5 from Black & Veatch, Update and Explanation of Changes to the Cost and Benefit Analysis in Support of the Commonwealth Edison (ComEd) AMI Plan Due to Revised Meter Deployment Schedule, ComEd Ex. 17.1.

Exhibit H – ICC Dkt. No. 12-0298 Order on Rehearing dated December 5, 2012 (Smart Meter Order on Rehearing)