

12-Person Jury

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Hearing Date: 11/25/2020 10:00 AM - 10:00 AM
Courtroom Number: 2410
Location: District 1 Court
Cook County, IL

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DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2020CH05138

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

Randall Kuhn, Robert Neiman, Erica)
Lieschke, Windward Roofing Construction,)
Inc., In Demand Electronic Court Reporting,)
Inc., and Standard Equipment Company,)
individually and on behalf of all others)
similarly situated,)
)
Plaintiff,)
)
v.)
)
Commonwealth Edison Company)
d/b/a ComEd; and Exelon Corporation,)
)
Defendants.)

9902383

CASE NO. 2020CH05138

CLASS ACTION

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

NOW COME the Plaintiffs, Randall Kuhn, Robert Neiman, Erica Lieschke, Windward Roofing Construction, Inc. (“Windward”), In Demand Electronic Court Reporting, Inc. (“In Demand”), and Standard Equipment Company (“Standard Equipment”),¹ individually and on behalf of all others similarly situated, by their attorneys, Romanucci & Blandin, LLC and DiCello Levitt Gutzler LLC, and in complaining against Defendant Commonwealth Edison Company, doing business as ComEd (“ComEd”) and Defendant Exelon Corporation (“Exelon”),² pleading in the alternative, state as follows:

¹ Collectively referred to herein as “Named Plaintiffs” or “Plaintiffs.”

² Collectively referred to herein as “Defendants.”

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I. PRELIMINARY STATEMENT

1. From 2011 through the present day, millions of individuals and businesses owning or leasing property and operating business in the State of Illinois were unknowing victims of a vast and corrupt criminal scheme perpetrated by the State's largest utility company.

2. Through rampant and widespread corruption in the form of bribery of Illinois elected officials, ComEd and its parent company, Exelon Corporation, deprived ratepayers of vast sums of money, totaling in the hundreds of millions, if not billions, of dollars.

3. This pay-for-play scheme saw Defendants benefit in the form of changes in rate formulas for the providing of their utility services, increases in rates charged for those utility services (rate hikes), and subsidies all gained off the back of unknowing customers who had no choice but to pay these wrongfully inflated rates.

4. ComEd, through its parent, Exelon, admitted, accepted, and acknowledged in a Deferred Prosecution Agreement,³ entered on July 17, 2020, that it is responsible under federal criminal law for the acts of its current and former officers, employees, and agents as charged in the Agreement's Statement of Facts.

5. ComEd, through its parent, Exelon, admitted, accepted, and acknowledged that those Statements of Fact are true and accurate.

³ The July 17, 2020 Deferred Prosecution Agreement and accompanying documents, including the Statement of Facts, are hereby incorporated into Plaintiffs' Class Action Complaint and are attached hereto as **Exhibit 1**.

6. Specifically, ComEd, through its parent, Exelon, agreed and accepted responsibility for bribery in violation of Title 18, United States Code, Section 666(a)(2).

7. While the Deferred Prosecution Agreement entered into by the Defendants will see them pay approximately \$200,000,000 in fines to the United States Treasury, the ratepayers who were the unknowing victims of this corrupt scheme were left without recourse—until now.

8. Plaintiffs are individuals living and businesses operating in the State of Illinois. Plaintiffs seek to represent a Class of individuals, groups, and businesses, all of whom were victims of Defendants' corruption, bribery, and other unlawful behavior, and to obtain restitution and compensation from Defendants for their ill-gotten gains.

II. PARTIES

A. Plaintiffs

9. Randall Kuhn is and was, at all relevant times, an Illinois citizen, residing in Lake Forest, Illinois. As an Illinois citizen between the time period of 2011 until 2019, Randall Kuhn paid electricity bills to Defendants.

10. Robert Neiman is and was, at all relevant times, an Illinois citizen, residing in Glencoe, Illinois. As an Illinois citizen between the time period of 2011 until 2019, Robert Neiman paid electricity bills to Defendants.

11. Erica Lieschke is and was, at all relevant times, an Illinois citizen, residing in Chicago, Illinois. As an Illinois citizen between the time period of 2011 until 2019, Erica Lieschke paid electricity bills to Defendants.

12. Windward Roofing & Construction, Inc. is and was, between the time period of 2011 until 2019, an Illinois corporation with its headquarters located in Chicago, Illinois. As an Illinois corporation with offices located within Illinois between the time period of 2011 until 2019, Windward paid electricity bills to Defendants.

13. In Demand Electronic Court Reporting, Inc. is and was, between the time period of 2011 until 2019, an Illinois corporation with its headquarters located in Chicago, Illinois. As an Illinois corporation with offices located within Illinois between the time period of 2011 until 2019, In Demand paid electricity bills to Defendants.

14. Standard Equipment Company is and was, between the time period of 2011 until 2019, an Illinois corporation with its headquarters located in Elmhurst, Illinois. As an Illinois corporation with offices located within Illinois between the time period of 2011 until 2019, Standard Equipment paid electricity bills to Defendants.

B. Defendants

15. Commonwealth Edison Company d/b/a ComEd, is and was, at all relevant times, an Illinois corporation with its headquarters located in Chicago, Illinois. ComEd is authorized to transact business in the State of Illinois.

16. ComEd is the largest utility company in the State of Illinois, employing over 6,000 individuals. ComEd's customers include, but are not limited to, Illinois citizens, citizens of other states that own property in Illinois, and citizens of other states that own businesses that operate in Illinois.

17. ComEd's service territory comprises the majority of northern Illinois, including the Chicago metropolitan area and extending to the Wisconsin border to the north, the Iowa border to the west, the Indiana border to the east, and the Iroquois County Border to the south.

18. ComEd provides electricity to approximately 4,000,000 customers in Northern Illinois, alone.

19. ComEd is a majority-owned subsidiary of Exelon Corporation. ComEd holds itself out as an Exelon Company on its websites and in its corporate logo.

20. Exelon Corporation is and was, at all relevant times, a Pennsylvania corporation with its headquarters located in Chicago, Illinois. Exelon Corporation is authorized to transact business in the State of Illinois.

21. Defendant Exelon is headquartered in Chicago, Illinois and is authorized to do business in the State of Illinois.

22. Exelon is the parent company of Defendant ComEd and has ownership interests in Defendant ComEd.

23. Exelon has ownership interests in nuclear power plants in Illinois.

24. At all relevant times, Exelon exercised control over the day to day operations of ComEd.

25. At all relevant times, Exelon actively managed ComEd's day to day operations.

26. From 2011 through 2019, and through the present day, Exelon was aware of the unlawful pay-to-play scheme that is the subject of this lawsuit.

27. From 2011 through 2019, and through the present day, Exelon oversaw the unlawful pay-to-play scheme that is the subject of this lawsuit.

28. From 2011 through 2019, and through the present day, Exelon was a direct participant in the unlawful pay-to-play scheme that is the subject of this lawsuit.

III. FACTUAL BACKGROUND

A. Defendants' bribery of Illinois public officials was done to obtain benefits in the form of positive legislation.

29. As a utility company operating in and organized under the laws of the State of Illinois, ComEd is subject to extensive regulation by the State of Illinois.

30. From in or around 2011 through in or around 2019, Defendants actively engaged in efforts to influence Illinois elected officials, as set forth in the Deferred Prosecution Agreement, attached hereto as **Exhibit 1**.

31. Defendants' efforts were conducted in secret, were concealed from consumers, and were not revealed to consumers until the July 17, 2020 Deferred Prosecution Agreement was made public.

32. Defendants' efforts were specifically geared towards beneficial legislation concerning ComEd and its business.

33. In so doing, ComEd arranged for various associates and political allies of Illinois elected officials to obtain jobs, vendor subcontracts, and monetary payments associated with those jobs and subcontracts from ComEd.

34. Such jobs, payments, and other benefits occurred even in situations where certain political allies and workers performed little or no work that they were purportedly hired to perform for ComEd.

B. ComEd's perverse and corrupt practice of bribing Illinois elected officials resulted in beneficial legislation.

35. As a utility company operating in and organized under the laws of the State of Illinois, ComEd is subject to extensive regulation by the State of Illinois.

36. Specifically, the State of Illinois, by and through its elected legislature, regulates the rates that ComEd may charge its customers, as well as the rate of return ComEd may realize from its business operations, including the provision of electricity to its customers.

37. The legislative branch of the State of Illinois, known as the Illinois General Assembly has routinely considered bills and has passed legislation has had a substantial impact on ComEd's operations and profitability.

38. This legislation affected the regulatory process that ComEd used to determine the rates that ComEd charged its customers for the delivery of electricity.

39. Specifically, in 2011, the General Assembly passed the Energy Infrastructure and Modernization Act ("EIMA").

40. EIMA provided for a regulatory process through which ComEd was able to more reliably determine rates it could charge customers and, in turn, determine how much money it was able generate from its operations to cover costs for grid-infrastructure improvements *inter alia*.

41. The passage of EIMA therefore helped improve ComEd's financial stability.

42. EIMA was passed by the Illinois House of Representatives in or around May 2011 and by the Illinois Senate in or around August 2011.

43. EIMA was then vetoed by the Governor of the State of Illinois, Patrick Quinn.

44. Thereafter, in or around October 2011, both houses of the Illinois General Assembly voted to override the Governor's veto.

45. In 2016, the General Assembly passed the Future Energy Jobs Act ("FEJA"), which provided for a renewal of the regulatory process that was beneficial to ComEd previously implemented with the passage of EIMA.

46. EIMA included provisions that ensured rate increases for ComEd and allowed ComEd to increase its net operating income, and those provisions were renewed in FEJA.

47. ComEd has collected hundreds of millions of dollars in Zero Emission Standard "taxes and fees" under FEJA and will continue to do so for years to come.

48. Since the passage of FEJA, ComEd has had a continuing interest in advancing legislation in the General Assembly favorable to its interests and opposing legislation that was not consistent.

49. Between in or around 2011 and in or around 2019, during the same time frame that ComEd was making payments to associates of Illinois elected officials and extending other benefits for purpose of influencing and rewarding Illinois elected officials, ComEd was seeking the support of beneficial legislation, specifically EIMA and FEJA.

50. ComEd knowingly continued their payments and benefits to Illinois elected officials and their associates to ensure a continued favorable rate structure.

51. On July 16, 2020, Exelon's Vice President for Compliance and Audit signed a Deferred Prosecution Agreement, which acknowledged on behalf of Defendants, that the "reasonably foreseeable anticipated benefits to [Defendant] ComEd of such legislation exceeded \$150,000,000."

52. The actual amount of benefits gained through this illegal scheme and unlawfully deprived from the Plaintiffs is to be determined at trial.

C. The Deferred Prosecution Agreement

53. ComEd committed bribery in violation of Title 18 of the United States Code, Section 666(a)(2), in each year from 2011 to 2019.

54. ComEd corruptly gave, offered, and agreed to give things of value, namely jobs, vendor subcontracts, and monetary payments associated with those jobs and subcontracts for the benefit of Illinois elected officials, like Public Official A, and

their associates, with intent to influence and reward Illinois elected officials, as agents of the State of Illinois, a State government that during each of the twelve-month calendar years from 2011 to 2019, received federal benefits in excess of \$10,000, in connection with any business, transaction, and series of transactions of \$5,000 or more of the State of Illinois, namely, legislation affecting ComEd and its business; in violation of Title 18, United States Code, Section 666(a)(2).

55. On July 17, 2020, the United States Attorney for the Northern District of Illinois, John R. Lausch Jr., entered into a Deferred Prosecution Agreement with ComEd, through its representatives and attorneys, pursuant to authority granted by Exelon's Board of Directors.

56. In the Deferred Prosecution Agreement, ComEd acknowledged and agreed that they would be charged with bribery in violation of Title 18 of the United States Code, Section 666(a)(2).

57. In so doing, ComEd admitted, accepted and acknowledged that it was responsible under United States law for the acts of its current and former officers, employees, and agents as charged in the Information and set forth in the Statement of Facts, which was attached as Exhibit A and incorporated by reference into the Agreement.

58. Critically, ComEd admitted, accepted, and acknowledged that the facts alleged in the Information and described in the Statement of Facts were true and accurate.

59. ComEd agreed that it will neither contest the admissibility of nor contradict the Statement of Facts in any such proceeding, including any trial, guilty plea, or sentencing.

60. ComEd expressly agreed that it shall not, through present or future attorneys, officers, directors, employees, agents, or any other person authorized to speak for ComEd, make any public statement, in litigation or otherwise, contradicting the acceptance of responsibility by ComEd set forth in the Deferred Prosecution Agreement or the facts within the Statement of Facts.

IV. CLASS ACTION ALLEGATIONS

61. Plaintiffs bring this action on their own behalf and on behalf of all other similarly situated individuals and businesses.

62. Pursuant to Illinois Code of Civil Procedure 735 ILCS 5/2-801, the Plaintiffs seek to certify and represent a class defined as:

All ComEd residential, commercial, and industrial customers, both direct and indirect, who paid utility bills that included subsidies and rate increases from 2011 through the present day.⁴

63. Excluded from the Class are:

- a. ComEd, its legal representatives, elected officials, officers, directors, successors, and assigns;
- b. Exelon, its legal representatives, elected officials, officers, directors, successors and assigns; and
- c. The Judge and any Special Master to whom this case is assigned, and any member of their immediate families.

⁴ Plaintiffs reserve the right to amend the class definition at any point in the lawsuit as more facts become available.

64. **Numerosity**—The Class alleged herein consists of millions of individuals and entities (including organizations, unincorporated associations, corporations, and other businesses) who are both direct and indirect ComEd customers. The sheer size of the Class renders joinder of all class members impracticable. In addition, joinder is impracticable because, upon information and belief, many Class members are unaware of the fact that their rates were increased as a result of Defendants’ unlawful conduct and that they have the right to seek redress in court. Accordingly, there is no appropriate avenue for the protection of Class members’ rights other than through a class action.

65. **Adequacy**—Plaintiffs have a strong personal interest in the outcome of this action, have no conflicts of interest with other Class members, and are willing and able to fairly and vigorously represent the other Class members as they pursue their similar claims in this action. Plaintiffs were all ComEd customers during the relevant time period of 2011 through the present day and paid heightened rates as a result of Defendants’ unlawful conduct. Plaintiffs had the same or similar agreements with Defendants for their utility services as did the other Class members. The legal theories under which the Plaintiffs seek relief are the same or similar to those on which all Class members will rely.

66. Plaintiffs are represented by Romanucci & Blandin, LLC and DiCello Levitt Gutzler LLC. Both are experienced counsel and have extensive experience handling class action litigation, mass tort litigation, and other aggregate litigation in

both state and federal court. Plaintiffs' counsel have the resources, expertise, and experience to prosecute this action. Plaintiffs' counsel know of no conflicts among Class members or between the attorneys and Class members.

67. **Commonality and Predominance**—Plaintiffs' claims arise from the same nucleus of operative facts—namely, Defendants' near-decade-long, corrupt pattern and practice of bribing Illinois elected officials. Common questions of law and fact abound in this case such that their common resolution and answers predominate over any individual issues that may arise and drive the litigation forward. Those questions include, but are not limited to, the following:

- a. Whether Defendants were unjustly enriched at the expense of ComEd customers by the bribery scheme;
- b. Whether securing rate increases through a bribery scheme was an unfair practice;
- c. Whether Defendants must repay ComEd customers and make them whole for excess payments to ComEd; and
- d. The amount of excess payments to ComEd.

68. The common issues of fact and law affecting Plaintiffs' and the other Class members' claims, including, but not limited to, the common issues discussed above, predominate over issues affecting only individual claimants.

69. **Appropriateness**—A class action lawsuit is the appropriate method for adjudicating this matter in a fair, just, and efficient manner. The filing and maintenance of millions of lawsuits in front of one, or numerous courts, does not serve judicial efficiency and economy. Should a class not be certified in this matter, each

of the millions of Class members will be required to pursue their claims and answer the same common questions detailed above for their individual case.

70. Resolution of the common issues of fact and law affecting Plaintiffs' and the other Class members' claims, including, but not limited to the common issues discussed above, in a single action will eliminate the chance of inconsistent and/or varying adjudications. Such resolution will further allow Class members to present their claims efficiently; share the costs of litigation, experts, and discovery; and preserve judicial time and resources. A class action is thus superior to other available means for the fair and efficient adjudication of Plaintiffs' and the other Class members' claims.

71. **Manageability and Ascertainability**—This matter presents an easily organizable and calculable universe of class members, particularly because Defendants have access, by way of their own records, to all of the names and addresses of all customers—including all Class members—during the relevant time period. Defendants' current and former customers can be ascertained through Defendants' own internal records system via an audit subject to any applicable privacy provisions.

V. CLAIMS ALLEGED

COUNT I

Violation of the Illinois Consumer Fraud and Deceptive Practices Act
Named Plaintiffs, individually and on behalf of all others similarly situated,

vs.

Defendant ComEd and Defendant Exelon

72. Plaintiffs adopt and incorporate Paragraphs 1-71 as if fully set forth herein.

73. The Illinois Consumer Fraud Act (“ICFA”) is a regulatory and remedial statute intended to protect consumers, borrowers, and businesspersons against fraud, unfair methods of competition, and other unfair and deceptive business practices. 815 ILCS 505/1, *et seq.*

74. ComEd is a “person” as defined by Section 505/1(c) of the ICFA.

75. Exelon is a “person” as defined by Section 505/1(c) of the ICFA.

76. Plaintiffs and each of the other Class members are “consumers,” as defined by Section 505/1(e) of the ICFA.

77. From 2011 through 2019, ComEd and Exelon engaged in unfair practices in the form of its admitted efforts to unlawfully influence and reward Illinois elected officials to assist ComEd and Exelon with the passage of legislation to ensure a favorable rate structure for ComEd and Exelon.

78. ComEd and Exelon’s bribery of Illinois elected officials paved the way for the passage of laws that benefited Defendants, leading to higher electric rates under the Energy Infrastructure and Modernization Act of 2011 (EIMA) and the Future Energy Jobs Act of 2016 (FEJA).

79. ComEd and Exelon's unfair practices occurred in its course of conduct involving trade and/or commerce.

80. ComEd and Exelon intended that Plaintiffs and the other Class members rely on its unfair practices by concealing the illegality of its conduct in influencing the passage of EIMA and FEJA, all while touting to Plaintiffs and the other Class members the "reasonableness" of the higher electric rates under EIMA and FEJA.⁵

81. ComEd and Exelon's conduct in engaging in bribery of public officials to assist in passage of favorable legislation offends public policy, is immoral, unethical, oppressive, and unscrupulous.

82. As a direct and proximate result of ComEd and Exelon's unfair practices, Plaintiffs and the other Class members suffered harm in an amount to be determined at trial.

83. The harm caused to Plaintiffs and the other Class members outweighs any countervailing benefit produced by ComEd and Exelon's unlawful and unfair practices.

84. Neither Plaintiffs, nor the other Class members could have reasonably avoided this harm, due to the nature of the Parties' relationship and ComEd's concealment of its unfair practices.

⁵ 2016 ComEd Press Release:
https://www.comed.com/News/Pages/NewsReleases/2016_04_13.aspx

WHEREFORE, Plaintiffs, individually and on behalf of the other Class members, respectfully request that this Court:

- (a) Issue an order certifying this action as a class action pursuant to Illinois Code of Civil Procedure 735 ILCS 5/2-801 in the manner described above with Named Plaintiffs as class representatives;
- (b) Issue a class-wide judgment finding ComEd and Exelon liable for the reasons described above for their unlawful conduct causing Plaintiffs and the other Class members to sustain damages resulting therefrom;
- (c) Enter a judgment declaring that ComEd and Exelon have committed the violations of law alleged herein;
- (d) Award Plaintiffs and the other Class members restitution to restore funds illegally obtained through ComEd and Exelon's violation of federal criminal law;
- (e) Award Plaintiffs and the other Class members compensatory damages in an amount that is fair, just, and reasonable to be determined at trial;
- (f) Award any other such relief as this Court may deem appropriate and equitable in the interests of justice.

COUNT II

Unjust Enrichment

Named Plaintiffs, individually and on behalf of all others similarly situated,

vs.

Defendant ComEd and Defendant Exelon

85. Plaintiffs adopt and incorporate Paragraphs 1-84 as if fully set forth herein.

86. From 2011 to 2019, ComEd and Exelon unjustly retained benefits in an amount to be determined at trial.

87. ComEd and Exelon unjustly retained these benefits, to the detriment of Plaintiffs and the other Class members, by illegally bribing Illinois elected officials

and their associates for the purpose of influencing them to gain their essential support for the passage of EIMA and FEJA.

88. ComEd and Exelon's retention of the benefits produced by EIMA and FEJA and secured through ComEd and Exelon's illegal conduct violates the fundamental principles of justice, equity, and good conscience.

WHEREFORE, Plaintiffs, individually and on behalf of all those similarly situated, respectfully requests that this Court

- (a) Issue an order certifying this action as a class action pursuant to Illinois Code of Civil Procedure 735 ILCS 5/2-801 in the manner described above with Named Plaintiffs as class representatives;
- (b) Issue a class-wide judgment finding ComEd and Exelon liable for the reasons described above for their unlawful conduct causing Plaintiffs and the other Class members to sustain damages resulting therefrom;
- (c) Enter a judgment declaring that ComEd and Exelon have committed the violations of law alleged herein;
- (d) Award Plaintiffs and the other Class members restitution to restore funds illegally obtained through ComEd and Exelon's violation of federal criminal law;
- (e) Award Plaintiffs and the other Class members compensatory damages in an amount that is fair, just, and reasonable to be determined at trial;
- (f) Award any other such relief as this Court may deem appropriate and equitable in the interests of justice.

VI. JURY DEMAND

Plaintiffs, individually and on behalf of the other proposed class members, demand a trial by jury on all issues herein so triable.

Dated: July 27, 2020

Respectfully submitted,

/s/ Stephan D. Blandin

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