

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

FIRST DIVISION
December 31, 2015

No. 1-15-1911
2015 IL App (1st) 151911-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CITIZENS UTILITY BOARD,)	
)	Appeal from the Order of the
)	Illinois Commerce Commission.
Petitioner-Appellant,)	
)	
v.)	
)	Docket No. 15-0284
ILLINOIS COMMERCE COMMISSION and)	
COMMONWEALTH EDISON COMPANY,)	
)	
Respondents-Appellees.)	
)	

JUSTICE CONNORS delivered the judgment of the court.
Justices Cunningham and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The decisions of the Commission that dismissed the Board's complaint on the Commission's own motion and denied the Board's application for rehearing were set aside and remanded with directions where the court could not conduct an informed judicial review because the decisions of the Commission completely lacked any findings or analysis.

¶ 2 Petitioner, the Citizens Utility Board (Board) filed a complaint with respondent, the Illinois Commerce Commission (Commission), which requested that the Commission exercise its authority pursuant to section 16-108.6(e) of the Public Utilities Act (Act) (220 ILCS 5/16-

108.6(e) (West 2012)) to open an investigation into the progress made by respondent, Commonwealth Edison Company (ComEd), in achieving the goals of the Energy Infrastructure Modernization Act (220 ILCS 5/16-108.5 (West 2012)) and ComEd's Smart Grid Advanced Metering Infrastructure Deployment Plan (AMI Plan). The Commission subsequently dismissed the Board's complaint on its own motion. On appeal, the Board argues that the Commission's dismissal and subsequent denial of its application for rehearing were improper because the Commission failed to give notice or an opportunity to be heard, and the Commission failed to provide any basis for its dismissal. We hold that we cannot conduct an informed judicial review of the Commission's dismissal because the decisions of the Commission lack any findings or analysis.

¶ 3

BACKGROUND

¶ 4 "In 2011, the legislature enacted the Energy Infrastructure Modernization Act, which is section 16-108.5 of the Public Utilities Act (220 ILCS 5/16-108.5 (West 2012)), to stimulate new investments by utilities in the [s]tate's energy infrastructure." *People ex rel. Madigan v. Illinois Commerce Comm'n*, 2015 IL App (1st) 140275, ¶ 4 (quoting *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 2014 IL App (1st) 130302, ¶¶ 4, 5). "The [Energy Infrastructure Modernization Act] sets forth investment plans for participating utilities that require them to invest in 'electric system upgrades, modernization projects and training facilities,' as well as the modernization of their transmission and distribution infrastructures." *Hawkins v. Commonwealth Edison Co.*, 2015 IL App (1st) 133678, ¶ 5 (quoting 220 ILCS 5/16-108.5(b)(1), (2) (West 2012)). ComEd, as a participating utility, was required, pursuant to section 5-/16-108.6(c) of the Act, to file its AMI Plan, which "shall provide for investment over a 10-year period that is sufficient to implement the AMI Plan across its entire service territory in a manner that is

consistent with subsection (b) of [s]ection 16-108.5 *** ." 220 ILCS 5/16-108.6(c) (West 2012). ComEd filed its AMI Plan and the Commission subsequently approved its plan on June 22, 2012. *Hawkins*, 2015 IL App (1st) 133678, ¶ 6. Beginning in 2013, on April 1 of each year, each participating utility was required to submit a report on the status of its progress in implementing its AMI Plan. 220 ILCS 5/16-108.6(e) (West 2012). The report must: "(1) describe the AMI investments made during the prior 12 months and the AMI investments planned to be made in the following 12 months; (2) provide sufficient detail to determine the utility's progress in meeting the metrics and milestones identified by the utility in its AMI Plan; and (3) identify any updates to the AMI Plan." *Id.* ComEd filed its 2015 report with the Commission on April 1, 2015.

¶ 5 On April 10, 2015, the Board filed a complaint with the Commission pursuant to section 5/16-108.6(e) of the Act (220 ILCS 5/16-108.6(e) (West 2012)) that requested the Commission open an investigation into ComEd's 2015 report and require that ComEd submit a revised version of its report that provides sufficient detail to determine its progress. Specifically, the Board's complaint asserted that although ComEd's 2015 report reflected progress in some areas, there were still "some budget and deployment areas for which additional information would be necessary to assess the utility's progress in the deployment of [the] AMI [Plan]." The Board further stated that more detail should have been provided regarding changes in the project budget, repair and replacement of meters, and proposed pilot projects on smarter streetlights and voltage optimization. The Board's complaint referenced a \$42.5 million increase in the AMI Plan budget and stated that "[t]he Commission should ask for more information on the drivers of that change in projection and information on how changes in proposed deployment affect the overall budget." At the conclusion of its complaint, the Board requested "that the Commission

exercise its authority pursuant to [s]ection 16-108.6(e) of the [Act] to open an investigation into ComEd's progress in achieving the goals of the [Energy Infrastructure and Modernization Act] and its 2012 [AMI] Plan."

¶ 6 On April 22, 2015, during a bench session in Springfield, the Commission dismissed the Board's complaint upon its own motion. Prior to the complaint's dismissal, one commissioner spoke out against the Commission's motion to dismiss. In its entirety, the commissioner's statement was as follows:

"The 2011 Energy Infrastructure and Modernization Act was implemented partly to provide more regulatory certainty for electric utility as they expend large amounts of capital in modernizing the grid. This included a pared down process accelerating their rate cases while adding reconciliations. It also established this narrow window to review the companies' updates to their infrastructure investment plans.

The companies have benefitted from the certainty and quick review process as they roll out their programs. However, as has been pointed out by advocates, the ratepayers have been slow to realize the benefits they were promised. These AMI [Plan] updates before us for consideration represent the blueprints for achieving these benefits promised to the General Assembly and ratepayers.

Staff notes that the utilities have met requirements to be in compliance with the law. And I don't believe there was enough time allowed for them to conduct a thorough analysis of the content or substance of the AMI [Plan] updates.

The Commission has the responsibility to take a close look at these expansive programs on behalf of the ratepayers and the General Assembly. As long as parties bring before the Commission reasonable concerns, then the Commission should take the steps required to bring

more transparency and clarity into how the utilities are using these dollars that increase everyone's bills.

Here, [the Board] has raised reasonable concerns regarding *** ComEd's *** AMI [Plan] updates, and the Commission should initiate investigations in response. And because of what I just indicated, I will be voting no on the motion to dismiss." Three commissioners voted in favor of the motion to dismiss and two voted against it; thus, the Board's complaint was dismissed pursuant to its own motion. Notice of the Commission's dismissal was sent to the Board and ComEd on April 23, 2015. The notice of dismissal was labeled a "certificate of commission action" and merely stated, "[t]his is to certify that the Commission in conference on April 22, 2015, [granted] the [m]otion to [d]ismiss on the Commission's [o]wn [m]otion."

¶ 7 Three commissioners voted in favor of the motion to dismiss and two voted against it; thus, the Board's complaint was dismissed pursuant to its own motion. Notice of the Commission's dismissal was sent to the Board and ComEd on April 23, 2015. The notice of dismissal was labeled a "certificate of commission action" and merely stated, "[t]his is to certify that the Commission in conference on April 22, 2015, [granted] the [m]otion to [d]ismiss on the Commission's [o]wn [m]otion."

¶ 8 On May 22, 2015, the Board filed its verified application for rehearing. In its application for rehearing, the Board asserted that the Commission erred in concluding that it could dismiss a complaint brought under section 126-108.6 of the Act and in dismissing the Board's complaint without providing notice and an opportunity to respond. Further, the Board argued that the Commission's dismissal order was not legally proper since it lacked any grounds for dismissal. In a memorandum dated May 26, 2015, the administrative law judge who was assigned to this matter proposed, "[u]nless the Commission is swayed by [the Board's] arguments, I would

recommend that the application for rehearing be denied." On June 3, 2015, the Commission, in another 3-2 vote, denied the Board's verified application for rehearing. Notice of the Commission's decision was sent to the Board and ComEd on June 5, 2015. Again, the notice was labeled as a "certificate of commission action" and merely stated, "[t]his is to certify that the Commission in conference on June 3, 2015, [denied] the [v]erified [a]pplication for [r]ehearing of the [Board], filed on May 22, 2015." The Board filed its timely notice of appeal on July 7, 2015.

¶ 9

ANALYSIS

¶ 10 The Board's notice of appeal addresses two of the Commission's decisions: the April 22, 2015, decision to grant its own motion to dismiss the Board's complaint and the June 3, 2015, decision to deny the Board's application for rehearing. "The Commission's findings will be reversed only if they 'are not supported by substantial evidence based on the record; the Commission acted outside the scope of its statutory authority; the Commission issued findings in violation of the [s]tate or [f]ederal [c]onstitution or law; or the proceedings or the manner in which the Commission reached its findings violates the [s]tate or [f]ederal [c]onstitution or law, to the prejudice of appellant.' " *Citizens Utility Board v. Illinois Commerce Comm'n*, 291 Ill. App. 3d 300, 304 (1997) (quoting *Citizens Utility Board v. Illinois Commerce Comm'n*, 166 Ill. 2d 111, 120-21 (1995) citing 220 ILCS 5/10-201 (e)(iv)(A) through (e)(iv)(D) (West 1992)).

¶ 11 According to section 10-201(e)(iii) of the Act, "[i]f the court determines that the Commission's rule, regulation, order or decision does not contain findings or analysis sufficient to allow an informed judicial review thereof, the court shall remand the rule, regulation, order or decision, in whole or in part, with instructions to the Commission to make the necessary findings or analysis." 220 ILCS 5/10-102(e)(iii) (West 2012). "Because the Act obliges the Commission

to provide 'findings or analysis sufficient to allow an informed judicial review' (220 ILCS 5/10-201(e)(iii) (West 1994)), the Commission must set forth more reasoning and analysis than would be acceptable from a circuit court." *Citizens Utility Board*, 291 Ill. App. 3d at 304. However, this does not mean that the Commission is required to render specific findings as to each evidentiary fact or claim. *Id.* at 304-05. The Commission is only required to set forth the facts which form the basis for the order so as not to hinder informed review. *Abbott Laboratories, Inc. v. Illinois Commerce Comm'n*, 289 Ill. App. 3d 705, 716 (1997) (citing *Lefton Iron & Metal Co. v. Illinois Commerce Comm'n*, 174 Ill. App. 3d 1049, 1055 (1988)).

¶ 12 In this case, neither of the decisions from which the Board appeals contain *any* findings or analysis. Each certificate of commission action is completely devoid of any findings or explanation regarding the Commission's decisions. The April 23, 2015, certificate of commission action only states, "[t]his is to certify that the Commission in conference on April 22, 2015, [granted] the [m]otion to [d]ismiss on the Commission's [o]wn [m]otion." Likewise, the June 5, 2015, certificate of commission action states, "[t]his is to certify that the Commission in conference on June 3, 2015, [denied] the [v]erified [a]pplication for [r]ehearing of the [Board], filed on May 22, 2015." Both certificates of commission action clearly reflect that the Commission made decisions regarding the Board's complaint. However, neither reflects any findings or analysis by the Commission in reaching its decisions. This court cannot determine whether the Commission's findings were supported by substantial evidence when no such findings exist. As a result, this court cannot conduct an informed judicial review.

¶ 13 **CONCLUSION**

¶ 14 Based on the foregoing, we set aside the April 22, 2015, and June 3, 2015, decisions of the Commission, reinstate the Board's complaint, and remand this matter to the Commission.

No. 1-15-1911

Upon remand, we direct the Commission to provide notice to the Board and ComEd and conduct further proceedings in accordance with section 5/10-108 of the Act. 220 ILCS 5/10-108 (West 2012). We further direct the Commission to set forth its findings of fact or analysis so that it would be possible for a reviewing court to conduct an informed judicial review in accordance with section 5/10-201(e)(iii) of the Act. 220 ILCS 5/10-201(e)(iii) (West 2012).

¶ 15 Set aside and remanded with directions.