

Illinois Commerce Commission Must Consider Public Comments

The Illinois Commerce Commission must consider comments made by ratepayers at public forums and on the Commission's own website before setting new utility rates.

Lake Wildwood Association and Apple Canyon Lake Property Owners' Association filed an appeal after the Illinois Commerce Commission (ICC or Commission) struck all references in their joint brief to public comments made by their members at Commission-conducted public forums and on the ICC's website. The Illinois Attorney General joined in the appeal in support of the Associations.

The ICC argued that it could not consider the public's input when making a decision in the case. The Appellate Court, however, held that the Commission's action "prejudiced the Associations" and "deprived the ratepayers of their statutory right to have their comments heard and considered by the Commission before the Commission issued its decision."

The Appellate Court found the law requires the Commission to conduct public forums and take comments on its website. By law, public forum comments must be reviewed by the administrative law judge when writing a proposed order. Website comments are reported to the Commissioners. The Court wrote that the comments are useful to the Commission in determining whether rates are "just and reasonable" and whether they are "understandable, generally accepted, and considered affordable to the public." The Court said the ICC undermined these statutory objectives. "Moreover, the Commission had no authority under any statute or Commission rule to strike the website and public form comments from the Association's brief."

The Court chided the Commission for arguing that the Commission cannot consider the public's comments, even though the law provides for public forums and website comments. The Court wrote, "Clearly, the legislature intended for the Commission to consider these public comments before deciding the case. Otherwise, allowing the public to comment during the public forums and on the Commission's website would be an empty gesture that would give the public no meaningful opportunity to be heard. Why would the legislature require the ALJ [administrative law judge] to consider the public forum comments before issuing a proposed decision, only to leave the Commission free to ignore both types of public comments when reaching its final decision? That result strikes us as absurd and unreasonable, and we cannot plausibly ascribe that intent to the legislature."

The Associations were represented by Balough Law Offices, LLC.

Apple Canyon Lake Property Owners' Association et al. v. Illinois Commerce Commission, Ill. 3d Dist. No. 100832, issued March 5, 2013.