

AMERICANA TOWERS CONDOMINIUM ASSOCIATION)
dka SUDLER AND COMPANY)
dka SUDLER NAGY, INC.)
by)
JOHN ARMETTA)
- vs -)
COMMONWEALTH EDISON COMPANY)

Complaint as to refusal to refund)
overpayments in Chicago, Illinois)

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ILLINOIS
COMMERCE COMMISSION

**RESPONSE TO COMMONWEALTH EDISON COMPANY'S
MOTION TO DISMISS**

ARGUMENT

I. TIME BARRED

ComEd's Motion To Dismiss is a fabricated false unfounded accusation intended only to justify keeping our paid overcharges.

ComEd is now protesting about having to return our \$100,000 overpayment; but, they weren't vocal when they billed us for a greater "quantity or volume" of electricity than we actually used; nor were they vocal when they billed us on a higher "incorrect class of service"; nor were they vocal when they "reviewed our account's billing history" in 1999.

ComEd is trying to rearrange the FACT that Americana Towers submitted a claim to ComEd for a refund, with documents and evidence, within 5 months (August 2002 to January 2003) after our "first knowledge"; after discovering, calculating and verifying ComEd's egregious uncontested mistakes that existed over an 86 month period.

Then, ComEd introduced false relevance that we should have known about their mistakes in 1999.

Then, ComEd ignored the affiants when Americana filed an Informal Complaint with the I.C.C. in July 2002 – 22 months after we "first had knowledge".

In David Geraghty's Affidavit, ComEd did not declare that Americana actually knew about ComEd's mistakes in 1999 (because it isn't true and they have no proof); especially because 1999 is when ComEd themselves actually knew about their own mistakes within the electric bills that they rendered to us, but they kept silent, hoping that Americana wouldn't catch it -- and we didn't for about 3 years.

ComEd's messages, within their 1999 electric bills, state that they **"reviewed our account's billing history"**.

In 1999, Commonwealth Edison Company determined that we qualified for a change in rate from the higher incorrectly charged Rate #6T to the always correct Rate #6 because our Demands were under 500 KWs for at least 16 months. Our Demands only went above 500 KWs because of ComEd's mistakes.

During the last 33 years, ComEd's mistakes put our Demands above 500 KWs only 7 months within a 42 month period; of which, only 3 times are enough for them to charge us on their higher Rate #6T, (however, against

the Tariff, ComEd charged us on Rate #6T after ONLY 1 month of being billed incorrectly with Demands over 500 KWs). We were billed under 500 KWs during the 246 months before that period – and we were billed under 500 KWs 35 months within that period – and we were billed under 500 KWs during the 108 months after that period. (389 out of 396 months)

When ComEd's mistakes put us over 500 KWs, we did not have a choice of rate!

Using the philosophy that the best defense is an offense, ComEd is trying to camouflage their early knowledge of their own mistakes by introducing false accusations and false logic.

ComEd charged us for higher volumes of electricity than we actually used and they also charged us on an incorrect classification of rate than we actually qualified for.

Therefore, we can't understand why ComEd is so "hell-bent" upon keeping our money, that they obtained under false pretenses, even if our claim was "time-barred".

All of our condominium owners worked too hard to have innocently overpaid Commonwealth Edison Company for their electricity during that 86 month period and then for us to discover, calculate, document and disclose their mistakes to them and then they refuse to return our money. They didn't earn our \$100,000 nor do they deserve to keep this windfall.

Why can't their wrong actions simply be corrected??

ComEd is claiming that they are justified in keeping our \$100,000 accumulated overpayments based solely on their conjecture that they believe that we "**should have known**" about their mistakes in 1999.

Although Americana Towers Condominium Association never did anything wrong, we continue to be the victim of Commonwealth Edison Company's over-zealous and unfair defense of their overcharges.

We are happy to pay for the amount of electricity that we use while being charged on the rate for which we qualify, just like every other customer; but, **it is unfair for us to reward Commonwealth Edison Company for their mistakes.** We hope that justice will finally prevail.

If anything, Americana Towers should be rewarded; not for ComEd's mistakes, which we believe were unintentional; but for withholding the knowledge of their own errors in 1999 when they reviewed our account; and also for now manufacturing accusations against us -- the later two of which we believe were intentional.

Now, ComEd wants the I.C.C. to dismiss our claim for a refund of their overcharges for only one reason; which happens to be an invalid and untrue reason.

ComEd continues to hide behind the only reason that they're asking to be allowed to keep our money -- a manufactured, irrelevant and unsubstantiated allegation that they believe that we should have known about their mistakes sooner.

ComEd's manufactured accusation is inconsistent with the I.C.C.'s Public Utility Act 5/9-252.1 and is inconsistent with the fact that we filed an Informal Complaint with the I.C.C. 22 months after we became aware of even the possibility of ComEd's errors.

ComEd should not be allowed to keep our money just because they say that they think that we knew about their mistakes in 1999 nor just because they say that they think that we should have known about their mistakes in 1999.

The I.C.C. P.U.A. doesn't state that a customer must file an Informal Complaint within 24 months of when ComEd thinks a customer should have known about their errors.

II. CUSTOMER OF RECORD

AMERICANA TOWERS CONDOMINIUM ASSOCIATION has been the legal owner and the only party responsible for payment of all expenses, INCLUDING ELECTRIC BILLINGS, for the past 33 years, since 1972.

We retain professional property management to facilitate those payments. We initially retained SUDLER NAGY, INC., which became SUDLER AND COMPANY, at the same address. We are now and always have been Commonwealth Edison Company's customer, responsible for payment of the electric bills at 1636 N. Wells Street in Chicago, Illinois 60614.

Commonwealth Edison Company's refund for \$100,000.00 + can be made payable to SUDLER NAGY, INC. or to SUDLER AND COMPANY, acting as our agent, if they have a problem writing that check directly to AMERICANA TOWERS CONDOMINIUM ASSOCIATION.

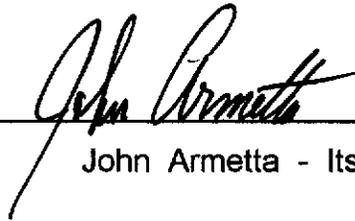
CONCLUSION

Because our actions were within the 24 month period after we "first had knowledge", our claim is not "time barred". Because we have been the same customer of ComEd's for the past 33 years, we have always been the legal responsible customer of record. Therefore, Commonwealth Edison Company's Motion To Dismiss should not only be denied, Commonwealth Edison Company should be compelled to return our money without any further delays.

Submitted by:

AMERICANA TOWERS CONDOMINIUM ASSOCIATION

By: _____



John Armetta - Its Property Manager

John Armetta - Property Manager
AMERICANA TOWERS CONDOMINIUM ASSOCIATION
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STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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05-0415

NOTICE OF FILING

TO: Parties on Certificate of Service

PLEASE TAKE NOTICE that on Friday July 29th, 2005, I filed with the Chief Clerk of the Illinois Commerce Commission a copy of our Response To Commonwealth Edison Company's Motion To Dismiss; attached hereto, a copy of which is hereby served upon you.



John Armetta - Property Manager
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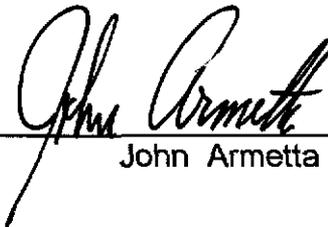
CERTIFICATE OF NOTICE

I hereby certify that on Friday July 29th, 2005, I served the Response to Commonwealth Edison Company's Motion To Dismiss, by causing copies thereof to be placed in the U.S. Mail, first class postage affixed, addressed to each of the parties indicated below:

Ms. Elizabeth A. Rolando
Chief Clerk
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, Illinois 62701

Mr. Glennon P. Dolan
Administrative Law Judge
Illinois Commerce Commission
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John Armetta