STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Americana Towers Condominium Association	:	
-vs-	:	**05-0415**
Commonwealth Edison Company	:	
	:	
Complaint as to refusal to refund overpayment in Chicago, Illinois.	:	

COMMONWEALTH EDISON PROPOSED REVISIONS TO ADMINISTRATIVE LAW JUDGE'S PROPOSED ORDER

By the Commission:

I. PROCEDURAL HISTORY

On June 30, 2005, John Armetta ("Armetta"), Property Manager for the Americana Towers Condominium Association ("Americana"), filed a verified Complaint against Commonwealth Edison Company ("ComEd") alleging that ComEd overcharged Americana for electric service provided during certain months between May 13, 1992 and July 12, 1999. According to the Complaint, the purported overcharges resulted from measurement and recording errors attributable to ComEd equipment (principally, usage meters) and personnel (principally, meter readers). Moreover, the Complaint alleges, ComEd's errors caused Americana to be billed for electricity at a higher rate than necessary, without justification in ComEd's tariffs. Americana requests refund of the purported overcharges with interest, estimated at approximately $181,000[1].

On July 25, 2005 ComEd filed a Motion to Dismiss the Complaint on the grounds that Armetta was not ComEd's customer of record at the relevant location and that his claims were time-barred under two provisions of the Illinois Public Utilities Act ("Act"), Sections 9-252 and 9-252.1[2]. On August 1, 2005, Armetta filed a Response, contesting ComEd's motion on both grounds. ComEd filed a Reply to to Armetta's Response on August 8, 2005. On August 15, 2005, Armetta filed a Response to ComEd's Reply. ComEd filed a Motion to Strike the latter filing on August 29, 2005 and Armetta filed a Response to that Motion on September 8, 2005.

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[1] This constitutes Americana's quantification of its ostensible damages as of March 2, 2007, when post-trial reply briefs were filed by the parties. The initial (pre-amended) Complaint requested $100,000. Americana subsequently revised its monetary request, both upward (to reflect accumulated interest and additional claims) and downward (to reflect abandoned claims). Since Americana requests recovery of accumulating interest, its monetary request would now exceed the (approximately) $181,000 quantified as of March 2, 2007.

[2] Respectively, 220 ILCS 5/9-252 and 5/9-252.1.

In a Ruling dated January 19, 2006, the Administrative Law Judge ("ALJ") assigned to this proceeding concluded that the Complaint was time-barred under Section 9-252 of the Act, but not under Section 9-252.1. The ALJ also determined that Armetta was not the proper complainant with respect to the allegations of the Complaint. However, Armetta and Americana were granted leave to make an appropriate motion to substitute Americana as the complainant in this case. Additionally, the ALJ granted ComEd's motion to strike Armetta's second response to ComEd's dismissal motion.

On January 27, 2006, Americana filed an Amended Complaint on its own behalf (replacing Armetta as complainant), repeating verbatim the allegations of the Complaint. On March 27, 2006, ComEd filed an Answer to the Amended Complaint. This document purported to also contain a "Renewed Motion to Dismiss," although ComEd's ground for dismissal – that the allegations against ComEd are time-barred – was denominated an "affirmative defense" in the body of the document. On May 2, 2006, Americana filed a document entitled a "(1) Response and Motions to Strike [ComEd's] Answer, Affirmative Defenses and 'Renewed Motion to Dismiss' and (2) Motion for Judgment on the Pleadings." On May 16, 2005, ComEd filed an adverse Reply to the latter filing. ComEd's Reply also contained a motion characterized as a "motion for judgment on the pleadings," but which ComEd actually presented as a motion to strike the Amended Complaint.

On June 8, 2006, the ALJ denied Americana's motions to strike ComEd's answer, affirmative defenses and dismissal motion. Americana's motion for judgment on the pleadings was also denied. The ALJ additionally denied ComEd's motion to dismiss and motion for judgment on the pleadings.

On July 12, 2006, the parties filed a Joint Agreement to extend this case for 60 days beyond the one-year deadline established in Section 10-108 of the Act[3] for entering a Commission Order in a complaint proceeding. The Joint Agreement provides for additional 60-day extensions until the Commission's final Order is entered.

On October 31, 2006, Americana filed a Motion for Continuance to Conduct Discovery, which was denied by an ALJ's oral ruling at the November 2, 2006 hearing in this matter.

On November 8, 2006, Americana filed a Motion to Compel what Americana believed would be more sufficient responses to its written data requests to ComEd. That motion was denied by an ALJ's oral ruling at the November 14, 2006 hearing[4].

[3] 220 ILCS 5/10-108.

[4] The ALJ withheld ruling on the sufficiency of ComEd's answer to a single sub-part of one Americana data request. Americana did not subsequently request a ruling on that sub-part.

On November 13, 2006, ComEd filed a Motion to Strike Americana's pre-filed rebuttal testimony as untimely filed. That motion was also denied by an ALJ's oral ruling at the November 14, 2006 hearing.

Pursuant to notice given in accordance with law and the rules and regulations of the Commission, this matter was heard by the ALJ on February 28, March 28, June 8, July 6, November 2, November 14 and November 15, 2006 at the Commission's offices in Chicago, Illinois. The November 14 and 15 hearings were evidentiary hearings, during which Americana presented testimony by its billing consultant, Marshall Shifrin (Americana Ex's. 1.0 and 2.0) and by its Chief Building Engineer, Stephan D. Rollins (Americana Ex. 3.0). ComEd presented Testimony by David F. Geraghty, Rate Design and Administration Manager in the Rate Department of ComEd (ComEd Ex. 1.0), Lynn Miller, Billing Analyst for Exelon Corporation (ComEd's corporate parent) (ComEd Ex. 2.0), and Woodson W. Scherer, Manager of Field and Meter Services for ComEd (ComEd Ex. 3.0). At the conclusion of the November 15, 2006 hearing, the evidentiary record was marked "Heard and Taken."

Americana and ComEd each filed an Initial Brief ("Init. Br.") on February 13, 2007, and a Reply Brief ("Rep. Br.") on March 2, 2007. An Administrative Law Judge's Proposed Order was issued on July 3 2007.

II. ANALYSIS AND CONCLUSIONS

The disputes in this proceeding all concern electric service furnished for common areas and infrastructure at Americana's premises, a condominium building at 1636 N. Wells St. in Chicago, Illinois[5]. The building was constructed in 1971 and, Americana states, much of its original service equipment remains intact. Ex. 3.0 at 2. According to Mr. Rollins, the building's engineer for the past twenty-eight years, occupancy has remained constant and full during his tenure. *Id*., at 3. He avers that no significant new electricity-consuming load was added to the building at any time since 1988. *Id*., at 2.

The building uses a two-pipe fan coil system and is heated by natural gas and cooled by an electric centrifugal chiller. *Id*. The chiller is the largest single electrical load in the building and the meters that apparently measured its usage are not the subject of dispute in this case[6]. With a two-pipe system, either hot water or chilled water can flow through the pipes, depending upon whether the building is being heated or cooled. Other than the chiller and natural gas boiler,

[5] Condominium units in the building are separately metered by ComEd. Americana Ex. 3.0 at 45-47. Electric service for those units is not at issue in this proceeding.

[6] Neither party conclusively established that the sequence of meters that recorded (from the same meter fitting) high summer usage and trivial winter usage were associated with Americana's chiller. The Commission considers it likely that those meters (numbered G036235, G981492, G726047 and G733658, Americana Ex. 1.1) did measure chiller usage.

the other significant mechanical equipment consists of a few 30-, 40- and 50-horse power motors, fans, pumps and elevators. *Id*.

Americana alleges several overcharges that ostensibly resulted from a number of discrete errors and omissions by ComEd. There is no common event, cause or omission that ties the various overcharges together (although multiple overcharges are purportedly attributable to a single malfunctioning usage meter and associated equipment). Consequently, analysis of Americana's claims requires separate consideration for each of several purported overcharges

A. Overcharges for Service from December 1992 through September 1993

1. Alleged overcharges for demand and consumption

Electricity usage and demand at Americana's premises was measured, at various times pertinent to this case, by meters placed in as many as ten separate meter fittings. Americana Ex. 1.1. The parties agree that during the nine-month period from December 12, 1992 through September 13, 1993 (the "9-Month Period"), one of those meters, number G250979 ("meter 979"), registered an unusual increase in electricity usage, reflected both in peak electricity demand (i.e., the highest 30-minute usage in a billing period, measured in kilowatts ("kw")) and electricity consumption (measured cumulatively in kilowatt hours ("kwh")). The demand registered by meter 979 during the 9-Month Period increased, at its height, to almost 300 kw, or approximately three times greater than historical demand registered by that meter. *Id*. This heightened demand continued until the billing month in which ComEd replaced meter 979 (on September 16, 1993) with a time-of-day meter, number G685520 ("meter 520"). Thereafter, for the next several years addressed in record evidence (i.e., through mid-1999), the demand registered on meter 520 reflected the historically normal demand in the months preceding the 9-Month Period (from about 61 kw to about 111 kw). *Id*.

The unusually high demands recorded during the 9-Month Period caused four of Americana's total monthly billing demands (that is, the sum of demands registered by all meters at the premises) to exceed 500 kw. Consequently, as specified in ComEd's tariffs, ComEd switched Americana to the more expensive Rate 6T (applicable to non-residential customers with supra-500 kw demand). This was improper, Americana argues, because "the kws of peak demands for the whole building have never legitimately reached 500 KW or greater during any summer or any non-summer month." Americana Ex. 1.0 at 10. "Americana's maximum total billed demand for the past fifteen years was 472.63 kw, occurring in the summer billing month from 7/13/99 to 08/10/99." *Id*. Therefore, Americana asserts, it was overbilled in two ways - for demand it never actually presented, at a higher rate than should have been applied[7].

[7] Moreover, according to Americana, its premises were wrongly placed on Rate 6T after only one month of demand exceeding 500 kw. Under ComEd's tariffs, three months of demand over 500

Americana avers that the foregoing peak demand measurements were erroneous, and that they resulted in overpayments for demand in the amount of $17,839.29, plus taxes and interest. Additionally, energy usage tripled from December 12, 1992 to September 13, 1993, causing Complainant to pay an additional $24,839.98 of overpayments, plus taxes and interest. Americana asserts that, based upon its historic demand and consumption record, and based upon the absence of significant new load-drawing equipment and systems at its premises, it could not have demanded or used that much electricity during the 9-Month Period.

The essential question posed by the foregoing facts and allegations is whether the bills Americana paid for service during the 9-Month Period were "incorrect due to an error…in measuring the quantity or volume of service provided," which would necessitate a refund under Section 9-252.1 of the Act. More specifically, did Americana actually present the peak kw demand and consume the kwh of electricity recorded on Meter 979?

On the one hand, there is ample evidentiary evidence supporting the inference that Americana did not demand or consume the quantities of electricity registered on meter 979 during the 9-Month Period. Demand and energy usage during that period grossly exceeded then-historical consumption. Yet, as already noted, Americana made no significant changes to its power-consuming equipment before or during the 9-Month Period. Further, demand and energy usage returned to, and remained within, historical consumption ranges after the removal of meter 979 from service at Americana's premises[8]. Since Americana is a natural gas-heated facility, its peak electricity consumption occurs during the summer air conditioning months, Americana Ex. 1.0, but the peak demands recorded by meter 979 during the 9-Month Period occurred in the winter (in the billing months from December 12, 1992 through March 16, 1993). Yet "[e]ven during last summer's billing period (from 07/12/06 to 08/10/06), while the Chicago-land area experienced some of the hottest days on record, Americana's total billed demand reached only 435.89 kws," not the supra-500 kw demands recorded during the 9-Monh Period. Americana Ex. 1.0 at 10.

Moreover, record evidence shows that events transpired during the first billing month of the 9-Month Period that could have caused Meter 979 to incorrectly measure electricity usage. On Christmas Eve, 1992 (specifically, at 3:30 am on December 25), "the power to [Americana's premises] went out. At this time, the building began to fill with smoke, which had originated from our electrical vault room, where our main switchboard [also known as the 'main

kw are required for application of Rate 6T. We address that issue in the next section of this Order.

[8] With one exception, which Americana attributes to a meter reading error by ComEd (see Section II.C. of this Order, below), none of the other meters at Americana's building diverged from historic or subsequent consumption patterns during the 9-Month Period.

electric distribution panel'] had a fault causing the power outage." Americana Ex. 3.1. The Chicago Fire Department and ComEd were called to the building on an emergency basis, *id*., and Gurtz Electric Company ("Gurtz"), a private electrical contractor, also came to the premises to perform repairs[9]. Americana Ex. 3.2. Power was ultimately restored at 5:45 pm on Christmas Day. Americana Ex. 3.1. As a result of this incident, the main electric distribution panel and associated equipment need to be (and later were) repaired or replaced. Americana Ex. 3.0 at 3-4.

All of the electricity from ComEd enters Americana's main distribution panel, from which wires distribute electric current to the multiple sub-panels housing ComEd's current transformers and meters[10]. *Id*., at 4. Because meter 979 began registering abnormally high demand and electric usage during the month in which the fire occurred, and because replacement meter 520 (and subsequent replacement meters) registered normal demand in the billing months after the 9-Month period, the inference arises that the accuracy of meter 979 was adversely affected by the Christmas incident.

Without countervailing evidence, the foregoing facts would permit an inferential finding that meter 979 incorrectly measured demand and usage during the 9-Month Period. However, ComEd presents significant rebuttal evidence. First, on September 29, 1993, after removal from Americana's premises, meter 979 passed accuracy testing, indicating that it had not malfunctioned while in service. ComEd Ex. 3.1. ComEd maintains that its meter testing procedures are themselves in compliance with Commission rules, and that the Commission regularly audits ComEd's testing equipment to ensure accuracy. Tr. 407 (Scherer). Moreover, ComEd insists, "there is no evidence that the December 25, 1992 fire damaged ComEd's meters" ComEd Init. Br. at 19.

Furthermore, the "previous" and "current" readings taken over the 9-Month Period matched, again suggesting normal functioning while in service[11]. Also, ComEd emphasizes, meter 979 was capable of correctly reading the heightened usage recorded over the 9-Month Period, as were the meters that later replaced meter 979 in the same meter fitting. Each was comparably sized and capable of registering peak demand over 300 kw.

Additionally, ComEd points out that Meter 979 is an electromechanical meter, and that such meters stop or slow down, rather than speed up, as "age, dirt and debris will build up into the bearing." Tr. 443 (Scherer). (The

[9] An entity called Thermodyne was also present at the premises on December 25-26 to perform repairs. Americana Ex. 3.1. The relationships among Thermodyne, Gurtz and Americana are not identified in the record.

[10] Transformers and meters each reside in their own panel.

[11] According to ComEd, when a "current" reading matches the "previous" reading recorded on a meter, it indicat[es] that the meter continued to correctly measure usage." ComEd Ex. 3.0 at 2. ~~We note, however, that current and previous readings are not associated with demand.~~

Commission assumes, however, that meter 979 was unaffected by this aging process, since, as ComEd stresses, it tested satisfactorily after removal.)

Further, ComEd stresses that Americana's load factors[12] during the 9-Month Period were consistent with its load factors during months outside that period, indicating that peak kw demand and energy usage rose together. ComEd thus draws the inference that the increased demand recorded by meter 979 (and, for that matter, all other meters at Americana's premises) simply reflected greater consumption, not a malfunctioning meter.

Also, ComEd argues that Americana has already accepted a settlement of any disputes regarding electricity consumption during the 9-Month Period. After ComEd concluded that Americana's demand exceeded 500 kw in billing periods from May through September, 1993, ComEd cancelled the bills initially issued through ComEd's Customer Information System and moved Americana's account to ComEd's Industrial Billing System, through which bills were re-issued under Rate 6T for the four billing periods from June through October, 1993. A billing dispute ensued, and Americana paid only the current portion of its bill after receiving ComEd's revised bills in October 1993. Americana's previous balance and late charges were carried forward, indicating, in ComEd's view, that it was working with Americana to resolve their billing dispute. This is significant, ComEd insists, because ComEd purports to review all outstanding issues when it reconsiders a customer's bill. Tr. 274-75 (Miller).

In March 1994, ComEd credited Americana's account, because time-of-use meters had not been installed in the May through October 1993 billing periods, and all energy usage had been billed at the higher on-peak rate. The credit, calculated by applying both peak and off-peak energy rates, reduced Americana's balance from $100,576.34 to $78,795.77. Peak and off-peak energy consumption were the only values adjusted. Peak demand was not changed.

From this, ComEd leaps to the conclusion that "this is a clear indication that kw demand was reviewed with [Americana] and found to be reflective of [Americana's] kw demand at that time. Complainant would not have settled the dispute with ComEd if the Maximum Demand clearly shown on the Billprt statements[[13]] did not accurately reflect its kw demand during each of the bill periods covered on the Billprt statements." ComEd Init. Br. at 10.

[12] "Load factor is a calculation of the amount of energy that a customer could use dependent on its maximum demand." Tr. 312 (Geraghty). In the calculation, the denominator is the amount of energy a customer would use if it consumed at its maximum demand at all times during the billing period. The numerator is the amount of energy actually used during the period. Thus, a load factor of 100 indicates that the customer constantly presented its maximum demand.

[13] "Billprt statements" are spreadsheets used by ComEd to re-calculate a customer's bill outside of ComEd's main billing systems. Billprt statements dated March 30, 1994 appear in the record at ComEd Ex. 1.5.

The Commission finds little value in the latter contention, which is grounded in the legal theory of accord and satisfaction. Since ComEd raises this argument as an affirmative defense, ComEd Answer at 3, ComEd bears the burden of proof and persuasion. Yet the record is completely devoid of evidence that the parties actually addressed – much less settled[14] – the issue of erroneous demand measurement that Americana presents in this case. We certainly cannot infer that *ComEd* raised the issue in late 1993 or early 1994, since ComEd has strenuously and repeatedly asserted throughout this proceeding that it believes its meter recordings are correct unless it is shown evidence to the contrary. Nor can we infer that *Americana* would have raised the issue. Americana maintains that it did not became aware of the likelihood of having paid erroneous demand charges until late in 2002. Indeed, it was on the basis of that assertion that Americana was able to pursue the instant complaint under Section 9-252.1 of the Act without dismissal for untimely filing. Therefore, there is no basis in the record for finding that Americana's present erroneous demand claims were satisfied by agreement of the parties in 1993 or 1994.

After rejection of the foregoing argument, the Commission finds that the following facts are established by record evidence and are salient to rendering a decision with respect to purported overcharges during the 9-Month Period.

First, as registered on meter 979, peak energy demand was abnormally high during all billing periods starting on December 12, 1992 and ending on September 13, 1993. Energy usage through meter 979 was also abnormal during all of these billing periods[15], except the last[16]. Meter 979 was removed from service on September 16, 1993 and replaced by meter 520. However, meter 979 was not removed because either party perceived it to be malfunctioning, but because it (and three other meters) were replaced by time-of-day meters[17]. Nonetheless, in the billing month beginning on September 13, 1993, the demand and energy usage formerly recorded by meter 979 returned to normal consumption patterns (and remained within that customary range through July 1999).

Second, Americana added no significant electricity-consuming load to its premises during the 9-Month Period. This is consistent with the fact that (with one disputed exception) the other meters serving Americana (that is, meters other than meter 979) recorded demand within Americana's customary range during that period.

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[14] ComEd's billing witness frankly acknowledges that she cannot link any account adjustment to the demand measurement errors involved in the present dispute. "I don't know if an adjustment was credited for the demand." Tr. 221 (Miller).

[15] December 12, 1992–January 13, 1993, January 13–February 11, 1993, February 11–March 16, 1993, April 14-May 13, 1993, May 13–June 14, 1993 and June 14–July 14, 1993. ComEd Ex. 1.1. Also, March 16-April 14, 1993. Americana Ex. 1.0 at 19.

[16] Usage returned to normal in the August 12-September 13, 1993 billing period. ComEd Ex. 1.1.

[17] Americana Ex. 1.1.

Third, meter 979 was tested on September 29, 1993 at ComEd's premises and performed within accuracy limits approved by the Commission. The current transformer associated with meter 979 at Americana was not tested. It was also not replaced. Nevertheless, substitute Meter 520 recorded historically normal consumption while connected to that transformer after September 16, 1993.

Fourth, the fire at Americana on December 25, 1992 occurred during the first billing month in which Meter 979 recorded abnormally high demand and usage. Electrical contractors for Americana repaired and replaced electrical equipment damaged by the December 1992 incident, and those repairs continued periodically until the morning of August 12, 1993. Americana's peak demand remained high during the August 12-September 13, 1993 billing period, but was closer to normal than during the preceding eight months of the 9-Month Period. Energy consumption, which had also been unusually high during the first eight months of the 9-Month Period, returned to normal in the August 12-September 13, 1993 billing period.

The preceding facts show that each party has supported its position with meaningful evidence and reasonable inferences. The abnormal demand recorded on meter 979 coincided with fire damage at Americana's premises. The abnormality was confined to that single meter, suggesting that fire had caused its malfunction. Americana installed no significant new load during the 9-Month Period and no other meter registered an undisputed abnormal demand. The meter that replaced meter 979 recorded normal demand immediately after the 9-Month Period. However, meter 979 passed its post-removal accuracy test, and the current transformer connected to meter 979 performed appropriately with replacement meter 520.

The Commission concludes that the parties have presented an evidentiary and inferential stalemate. While we can (and do) find that the demand recorded on meter 979 during the 9-Month Period was abnormal, we cannot attribute that abnormality to meter 979 or to its associated current transformer, or to some other error or omission by ComEd. Therefore, since Americana has the burden of proof and persuasion regarding a ComEd measurement error, and since Americana's hypothesis of failure by meter 979 (or its current transformer) has not been proven to be more likely than not, the Commission cannot sustain this part of Americana's complaint.

Although ComEd did not have to prove up the cause for the abnormal demand on meter 979, the question obviously remains. For whatever benefit it might provide to the parties, the Commission observes that there is an alternative hypothesis suggested by the record. While we need not (and do not) adopt this alternative as a formal finding regarding causation for the atypical demand on meter 979, we note that it does not involve erroneous measurement of peak demand by ComEd. Thus, we can say that the alternative hypothesis does not contradict our formal conclusion that Americana did not prove, by the greater weight of evidence and inference, that ComEd incorrectly quantified Americana's demand.

The alternative hypothesis is this: the abnormal demand is ultimately attributable to Americana equipment and/or cables damaged by the December 1992 fire in Americana's electrical vault, or to temporary replacements for those items installed by Americana's electrical contractors, or to periodic peak electricity demand presented by those contractors as they performed repairs (or to some combination of these).

This hypothesis arises from record evidence. On the night of December 24-25 1992, Gurtz Electric "[i]nstalled cable and equipment to restore power to the entire building on a temporary basis," according to a Gurtz invoice dated January 31, 1993. Americana Ex. 3.2. Americana's main distribution panel (or "switchboard"), which was destroyed by the fire, was not replaced at that time (although a replacement for the panel's interior was brought to the premises "to be installed at a later date," *id*.). Temporary cable and equipment apparently continued to serve Americana's premises for several months, until permanent replacements were put in place, as indicated by another Gurtz invoice, dated June 21, 1993, which states: "Replaced damaged conduit & cable feeding boiler rm [sic] bypass circuit (200A). Replaced defective cable feeding emergency circuit panel. Replaced defective cable feeding common area power panel." *Id*. The new interior of Americana's main distribution panel was not installed until sometime prior to presentation of the June 21 invoice. *Id*.

Thus, electricity was received and distributed at Americana's premises by temporary equipment and cable, installed by Americana's contractors, from January 25, 1992 until a date close to June 21, 1993. The exact dates on which work was performed during that interval are not listed, but 196 regular work hours and 57 overtime hours were billed. *Id*. It is reasonable to infer (but, again, we need not and do not formally find) that the temporary equipment associated with meter 979, or the testing of either those items or their permanent replacements, presented atypical demands to the meter. Since meter 979 tested satisfactorily, and since the connected current transformer functioned appropriately after that meter was subsequently replaced, and since Americana itself added no significant to meter 979 during that interval, it is not unreasonable to deduce that the abnormal demands recorded on meter 979 – which had to be caused by *something* –are attributable to temporary infrastructure or to the installation and testing of permanent replacements between Christmas 1992 to June 21, 1993.

It is also not unreasonable to deduce that the foregoing circumstances continued until the morning of August 12, 1993. Another Gurtz invoice, dated August 18, 1993, states that Gurtz "[c]ompleted fire repairs as per proposal," with "cut-over" to Americana's fully repaired electricity infrastructure starting at 10 pm on August 11 and ending at 7 am on August 12[18]. Thus, Americana was still being served by temporary cable and equipment, and Gurtz was still testing permanent replacement items, until the morning of the first day of the final monthly billing period in the 9-Month Period.

The inference that these circumstances are linked to the peak demand registered on meter 979 during the 9-Month Period is consistent with the pattern of both demand and consumption recorded by that meter before, during and after that period. ComEd Ex. 1.1. In particular, the Commission notes that consumption returned to normal levels during the last month of the 9-Month Period, while demand, although still atypically high, was lower than during the preceding eight months. *Id*. Additionally, it is significant that the load factor associated with meter 979 remained normal during the 9-Month period and plunged in the last month of that period. These facts suggest that once Americana's contractor completed the "cut-over" to new permanent equipment and cables on the morning of August 12, 1993, the causes of abnormal demand (and, for that matter, the cause of abnormal energy consumption) – whether temporary items or contractor activities – were removed[19].

Again, the Commission need not and does not formally find here that atypical demand on meter 979 during the 9-Month Period was attributable to the circumstances described above. There is no direct evidence linking abnormal demand to temporarily installed items or contractor activity. We note only that such linkage is consistent with critical evidence, (abnormal demand during the 9-Month Period, no additions to demand *by Americana itself* during that period, satisfactory test results for meter 979 and no apparent flaw in the associated current transformer). In contrast, Americana's hypothesis of defective performance by meter 979 is counterbalanced by ComEd's meter test and the satisfactory performance of the associated current transformer after removal of meter 979.

2. Alleged mis-application of Rate 6T

Americana maintains that there is another adverse effect associated with the high demands registered on Meter 979. Pursuant to ComEd tariffs, when a customer's monthly billing demand reaches or exceeds 500 KW in three of twelve billing months, ComEd transfers the customer's service to Rate 6T time-of-day service, instead of the less expensive Rate 6. As Americana views it, ComEd switched Americana's account to Rate 6T after only a single month of

[18] Additionally, at unspecified times between June 21, 1993 and August 11, 1993, Gertz "[i]nstalled conduit and [c]able for lowrise bus duct," over 239.5 work hours. Americana Ex. 3.2.

[19] Had "cut-over" been completed on August 11, the final abnormal demand on meter 979 (which could well have been associated with testing the new permanent infrastructure) may not have occurred during a new billing month, sparing Americana an additional month's high demand expense.

supra-500 kw demand (during the billing month May 13 through June 14, 1993). We note that this claim is not nullified by our finding, above, that Americana did not prove that ComEd erroneously measured Americana's demands during the 9-Month Period. Even if we assume that ComEd accurately measured monthly peak demands during that period, ComEd's tariffs did not authorize switching Americana to Rate 6T after only one month of supra-500 KW demand. Consequently, if ComEd did switch Americana prematurely, it would owe Americana the difference between ~~demand~~ energy charges actually (but erroneously) imposed under Rate 6T and the lesser charges that should have been imposed under Rate 6.

ComEd responds that Americana was not prematurely switched to Rate 6T, because ComEd was not required by Rate 6 to apply the three-month threshold to Americana's account before making that switch. That is so, ComEd contends, because Americana's account became a new customer account in mid-1993. As ComEd explains it, the named customer for the Americana premises account, for the pertinent billing months preceding June 14, 1993, was Sudler Marling, Inc., Americana's property manager. ComEd Ex. 1.0 at 8. Thereafter (apparently on June 25, 1993), the named customer was changed to Sudler Nagy, Inc., *id*., ComEd Ex. 1.4, presumably reflecting a business name change by the property manager. ComEd chose to regard Sudler Nagy as a new customer. Under Rate 6, a new customer with *estimated* demands in excess of 500 kw will be placed on Rate 6T. ComEd Ex. 1.0 at 7.

In fact, however, ComEd did not make a forward-looking estimate of Americana/Sudler Nagy's likely demands in June 1993. Rather, ComEd rebilled Americana/Sudler Nagy on Rate 6T in October 1993 with the benefit of hindsight. *Id*., at 8. An explanation of ComEd's billing systems is necessary here. Bills for Rate 6 customers are generated through ComEd's Customer Information System ("CIS"). Americana was billed on Rate 6 via CIS until October 1993. Then, ComEd re-issued bills for the four monthly periods beginning on June 14, 2003 and ending on October 15, 1993. However, these re-billings were generated under ComEd's Industrial Billing System ("IBS"), applicable to Rate 6T customers. ComEd retroactively applied Rate 6T because, having categorized Sudler Nagy as a new customer, it concluded that it was obliged to do so by the terms of Rate 6.

The issue, then, is whether ComEd properly interpreted and applied its Rate 6 tariff with respect to Americana and Sudler Nagy when it re-issued bills to Americana in October 1993. The relevant text of Rate 6 is as follows:

> Time of day charges shall apply to (1) any customer with a Maximum Demand of 500 kilowatts or more, but less than 1,000 kilowatts, in three of the twelve months preceding the billing month, one of which occurs during the three months preceding the billing

> month, (2) successors to customers served under these charges immediately prior to the date of succession whose estimated Maximum Demands meet the demand requirements in clause (1) above, (3) new customers whose estimated Maximum Demands meet the demand requirements in clause (1) above, and (4) any customer previously billed hereunder pursuant to clause (1) or (2), except as otherwise provided below.

The Commission concludes that ComEd misconstrued the foregoing language in two ways. First, it erroneously ~~(and self-servingly)~~ classified Sudler Nagy as a new customer under clause (3), rather than as an existing customer under clause (1). ~~ComEd's defense of that classification strains credulity.~~ On June 25, 1993, when ComEd was notified of the name change from Sudler Marling to Sudler Nagy, it did not begin treating Sudler Nagy as a new customer. That is, ComEd did not close out Sudler Marling's account and establish a new CIS account for Sudler Nagy. Instead, it continued to serve Americana's premises under the existing account. Similarly, when ComEd rebilled four months of service under ~~that~~ the IBS account in October 1993, it rebilled *Sudler Nagy* for the billing month of May 13-June 14, 1993, although Sudler Marling was still the named customer for that entire billing period. Americana Cross Ex. 5. ComEd also billed Sudler Nagy for the entire bill period beginning June 14, 1993, although Sudler Marling was still the named customer for the first 11 days of that billing period. ComEd Ex. 2.0 at 3. Had ComEd truly perceived Sudler Nagy to be a new customer, it would not have rebilled Sudler Nagy for service provided to Sudler Marling before June 25, 1993, the day Sudler Nagy became the named customer[20]. Plainly, ComEd regarded Sudler Marling, Sudler Nagy and Americana as the same entity for billing purposes[21].

We find that Sudler Nagy was a successor corporation for Sudler Marling, and that both corporations had, at all time relevant here, an identical and continuing role as property manager for the Americana premises and the owner

[20] ComEd characterizes its billing treatment of the Americana account from June 13 to June, 25 1993 as a mistake by the employee that retroactively switched Americana's premises to Rate 6T. "The biller technically should have still had this first Rate 6 [sic] bill under the name of Sudler Marling on Rate 6." Tr. 262 (Miller).

[21] Indeed, ComEd has described Americana, Sudler Marling and Sudler Nagy as the same billing entity in this proceeding, both explicitly ("The billing clerk had billing data that showed *the customer* exceeded 500 kw in four separate billing periods," ComEd Ex. 1.0 at 8 (emphasis added)), and implicitly ("the new customer, Sudler Nagy, Inc.,…had already demonstrated a demand of over 500 kw *in the four preceding billing periods*." ComEd Init. Br. at 9 (emphasis added)). It is only by combining a full billing month and partial billing month for Sudler Marling with billing months for Sudler Nagy that ComEd can refer to four separate billing months of supra-500 kw demand by "the customer." *See*, also, Tr. 250 (Miller) ("…having *over four months of usage* on a new customer [when recalculating Americana's bills in October 1993]"). (Emphasis added.)

of those premises, Americana Towers Condominium Association[22]. We further find that, for billing purposes under Rate 6, Sudler Nagy, on behalf of Americana, was an existing customer subject to clause (1), quoted and indented above. Accordingly, the demand threshold in clause (1) - *three* months of demand exceeding 500 kw - should have determined when Rate 6T could be applied to Americana.

ComEd's second error is that it construes the above-quoted text from Rate 6 to authorize retroactive Rate 6T billing for the necessary three months of supra-500 kw demand, even though the tariff says such demand must *precede* Rate 6T billing. In our view, clause (1) of the tariff permits Rate 6T time-of-day billing only *after* the requisite three months of demand over 500 kw. In fact, that is how ComEd administers Rates 6 and 6T. It does not install the time-of-day meter associated with 6T time-of-day rates until the requisite three months have occurred[23]. Indeed, ComEd sends the customer a "Notification of Possible Rate Change" after the first supra-500 kw month, so that the customer can anticipate what might happen *in the future* if demand remains at or above the 500 kw threshold. Americana Cross-Ex. 5. The customer receives a similar notice after a second month of supra-500 kw demand – again informing the customer of potential future consequences. Tr. 259 (Miller).

Accordingly, Sudler/Americana is ~~entitled to~~ qualified for a refund of the difference between Rate 6 and Rate 6T energy charges for the two billing periods starting on June 14, 1993 and ending on August 12, 1993[24]. ~~The amount of Americana's refund, as defined here, is not apparent from the record. That amount will need to be determined in the manner described later in this Order.~~ However, Americana and ComEd agreed to settle a dispute with regard to energy charges in March – May 1994. (Americana 2.0 p. 12, Tr. 177-178 (Shifrin)) Americana is not now eligible to claim a refund for the difference in energy charges due to the agreement settled in 1994 being barred by the time expired under the provisions of Section 9-252 and 9-252.1 of the Act.

We note that, for the purpose of resolving this issue of *when* Rate 6T could have been properly applied to Americana, the Commission has assumed for the sake of argument that Americana, in fact, exceeded 500 kw of peak

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[22] In briefing, Americana cites the following language from ComEd's tariffs: "The term 'Customer' as used herein includes a contractor, agent, or other representative acting for the Customer or the owner of the premises." Americana Rep. Br. at 10. Thus, ComEd clearly regards the premises owner (the principal), rather than the property manager (the agent), as the party indebted for electric service. We note, however, that the quoted language was not placed in the evidentiary record.

[23] "In fact, ComEd is not required to have time-of-use meters installed on a customer's account when the customer first exceeds the 500 kw threshold. A customer may exceed the 500 kw threshold only once and never transfer to Rate 6T." ComEd Rep. Br. at 14.

[24] In view of our findings and conclusions in the next section of this Order (II.A.3), in which the amount of properly billable demand (kw) is reduced for each of these two months, Americana is entitled to refund of the charges for excess kw as well.

demand during the May-June, June-July and July-August 1993 billing periods (and that Americana could properly have been billed under Rate 6T after August 12, 1993). The question of whether Americana actually exceeded 500 kw of demand in those three months, and was therefore properly transferable to Rate 6T, is addressed in the next section of this Order.

3. Should Americana have ever been on Rate 6T?

In addition to its claim that meter 979 inaccurately measured demand during the 9-Month Period, Americana also emphasizes that it was billed for an identical demand (243.6 kw), associated with meter 979, in three consecutive months during that period. Americana Init. Br. at 15. Americana asserts that these identical demands were estimates, and argues that such consecutive estimates contravene 83 Ill.Adm.Code 280.80, which requires actual meter readings under certain circumstances. However, Section 280.80 also permits consecutive estimates under other circumstances, and the record here does not contain sufficient evidence to enable the Commission to determine whether violation of Section 280.80 occurred. Moreover, Americana has not explained why consecutive estimates would relieve Americana of its obligation to pay for electric service. Section 280.80 establishes no such remedy for the affected customer.

The more meaningful question raised by the identical demands ascribed to meter 979 is whether Americana's premises ever actually qualified for transfer from Rate 6 to Rate 6T. Given our holding, above, that Americana, along with its property managers, was not a "new" customer within the meaning of the Rate 6 tariff, then Americana's premises should have remained on Rate 6 unless Americana demanded 500 kw in three of twelve consecutive billing months. According to billings described in the record, Americana's demand did exceed 500 kw in the following four billing periods in 1993: May 13-June 14; June 14-July 14; July 14-August 12; and August 12-September 13. However, if ComEd merely - and retroactively - *estimated* that Americana's demand reached the 500 kw threshold during those months, then it may be that Americana never *actually* reached the 500 kw threshold three times. The issue, then, is whether the demands attributed to meter 979 during at least two of those months are correct.

ComEd Ex. 2.1 is an excerpt from ComEd's terminal transaction register ("TTR"), a data base in which ComEd records account transactions associated with customers billed through its CIS (including Rate 6 customers). Tr. 214 (Miller). There are several entries for meter 979 in the TTR. An entry dated July 15, 1993, shows an actual demand reading of 63.47 kw for meter 979[25]. This yields a demand increment[26] of 4.06 kw over the reading used for the April-May 1993 bill period (59.41 kw). ComEd Ex. 2.2. That increment, recorded on July

[25] "July is actual readings off the meter." Tr. 249 (Miller).
[26] That is, the difference between demand readings. This increment is multiplied by a constant (60, for meter 979) to arrive at the kw demand billed to the customer. Tr. 241-42 (Miller).

15, was applied to *both* Americana's May-June and June-July bills in CIS. Tr. 290 (Miller). Thus, ComEd billed Americana ~~for *twice*~~ by estimating the demand ~~increment it recorded through an actual reading in July~~ and energy portion of the June and July bills based on an actual reading taken on July 14, 2003, as recorded in the TTR and in accordance with standard practices as approved by the Commission.

On August 2~~7~~6, 1993, as reflected on the August 27th entry in the TTR, ComEd ~~altered the~~ recorded an actual demand reading on meter 979, ~~applicable to May-June, to~~ which represented the last demand reading billed on meter 979 of 67.53 kw. ComEd Ex. 2.1. The increment between the April-May demand (59.41) and the ~~revised May-June~~ July-August demand (67.53) was 8.12~~,~~. Subtracting the June-July demand reading (63.47) from the July-August demand reading gives a usage of 4.06. This demand usage is based on the actual readings that were taken from the TTR and was used to bill meter 979 in the July-August bill period. Subtracting the April –May demand reading from the June-July reading also ~~which happens to~~ equals 4.06 and was the ~~*combined*~~ demand previously assigned to meter 979 for May-June and June-July. ~~This is peculiar for a number of reasons. First, it replaces an actual reading (in July) with an apparent estimate[27] (an estimate for which there is no explanation). Second, the estimated demand assigned in August to meter 979 for the May-June billing period is *greater than* the earlier actual reading on that meter in July. In effect, the actual July reading was tossed aside[28]. Third, although the August adjustment doubled the May-June demand on meter 979 (and, by extension, the estimated June-July demand that copied the May-June demand estimate), ComEd did not rebill Americana's demands for either May-June or June-July in CIS. Nor did ComEd revise the billed demands for those months during subsequent IBS billing. Americana Cross Ex's 5 & 6.~~ The demand register was not activated in June resulting in the billing clerk using the July demand reading to estimate the demand readings for the May-June and June-July bills. The high half hour demand established over the two-month period (5/13 to 7/14) was applied to both bills in accordance with ComEd's standard practices for estimating bills. The demand usage for the three bill periods (May – August) exceeded 200 kW and were in line with demand usage on meter 979 for the previous bill periods earlier in the year. (ComEd Ex. 1.1) The load factors for the bills also reflected usage consistent with previous load factors that year (May-June (68%), June-July (70.9%) and July-August (74.3%)). (Id.)

~~[27] It cannot be an actual reading for May, since it is greater than the actual reading in July. ComEd Ex. 2.1.~~

~~[28] The July reading continued to be ignored when Americana's account is transferred to IBS in September. In a TTR entry on September 24 ("correct the removal date on all 6 meters to 5-13-93 and change removals as follows…") demand on Meter 979, for May 13, is again pegged at 67.53. ComEd Ex. 2.1. "Removal" refers here to closing out Americana on CIS (Rate 6), to effectuate account transfer to IBS (Rate 6T). Thus, when ComEd's IBS personnel received Americana's account, they received a baseline demand reading of 67.53 on meter 979, to use for re-billing demands under Rate 6T, beginning on May 13.~~

Given our finding, earlier in this Order, that meter 979 was not proven to have inaccurately recorded Americana's demand, we must find here that the July reading on that meter (63.47 kw) was correct. That means that the 4.06 demand increment between Americana's April-May bill and the July reading was correct~~,~~ ~~but applying t~~That demand reading was applied to both the May-June and June-July bills ~~was only guesswork~~[29] in accordance with ComEd's standard billing practices and in accordance with Commission rules. ~~ComEd's August 27 demand adjustment on meter 979 for the May-June billing period, which retroactively doubled the estimated increment applied to May-June and June-July combined, was additional guesswork. The Commission sees no basis for discarding the actual July reading in the CIS and no basis for the identical demands later re-billed for meter 979, for May-June and June-July, in IBS. ComEd's TTR shows that those demands were estimated for May-June and June-July (in derogation of an actual reading) and incorrect (when applied to *each of* two separate months).~~

~~Other evidence confirms the foregoing analysis. With respect to the May-June bill, ComEd apparently acknowledges that Americana's demands from meter 979 were estimated~~[30]~~. However, since t~~The demands billed in June-July on all six of Americana's meters were identical to the demands from the preceding month, Americana Cross Ex's 5 & 6~~,~~. ~~it is clear to the Commission that the~~ ComEd followed standard practices by taking the ~~June~~May-July demand~~s~~ reading for meter 979 (and all other meters) ~~were also estimated~~ and applied the reading to both the May-June and June-July bills. ~~Moreover, because the estimate for May-June (copied in June-July) is double the actual July reading of meter 979, it, and the identical June-July estimate, incorrectly reflect the actual demand on meter 979 during each of those months.~~

Regarding Americana's July-August demands, another TTR entry on August 27 shows an actual reading in August of ~~71.40~~ 67.53 on meter 979. This reading is recorded in the TTR on August 27 as the previous read (the 8/12 reading). ~~We cannot discern from the record whether that reading~~ The actual reading along with the actual July reading (63.47) was used to calculate Americana's July 14-August 12 bill. ~~However, Americana's bill for that month simply replicated the estimated demands on meter 979 for the two previous months. It also replicated the increment (4.07) between the retroactive estimate entered in the TTR (for May) on August 27 (67.53) and the August actual reading entered in the TTR on the same day (71.40). Consequently, we conclude that the demand assigned to meter 979 for July-August was an estimate based on previous estimates that, themselves, did not accurately reflect actual demand.~~

~~[29] To be clear, we do not mean to suggest that an electric utility cannot use estimates. Rather, our view is that estimates must ultimately be trued-up, and in this case, ComEd's subsequent IBS bills to Americana did not do so.~~

~~[30] The oral testimony of ComEd's witness was sometimes discursive and not fully intelligible. Regarding estimates for the two pertinent billing months, the witness alternately stated that the May-June bill was estimated (by copying the June-July bill), Tr. 249 (Miller), and that the June-July bill was estimated (by copying the May-June bill). Tr. 251 (Miller).~~

~~Therefore, there are no two actual readings of meter 979 in the evidentiary record from which the July 14-August 12 bill could have been derived.~~

~~The Commission questions why, after Americana's account was transferred to IBS in September, IBS employees did not utilize corrected demands to re-bill Americana. ComEd witness Geraghty states that "[t]he [IBS] billing clerk had billing data that showed the customer exceeded 500 kw in four separate billing periods." ComEd Ex. 1.0 at 8. However, the decision to transfer Americana to IBS had already been made during CIS billing[31], on July 19, presumably because Sudler Nagy was (erroneously) perceived as a new customer that had surpassed 500 kw of demand (not over "four separate billing months," as Mr. Geraghty states, but, in July, after only one or two months of estimated supra-500 kw demand). The more likely explanation is that IBS personnel simply looked at the previously issued CIS bills and the TTR data discussed above. That data showed a beginning demand for meter 979 of 67.53 on May 13 and a demand of 71.40 on August 27. The demand increment between those dates - that is, for three-plus months - is 4.07, which is essentially the same demand billed for *each* of three single months (from May to August) on meter 979. Rather than alter the estimate-based billing rendered by CIS, IBS personnel simply re-billed the same demands at the higher Rate 6T.~~

Accordingly, we conclude that the three consecutive and identical demands ~~ultimately~~ billed ~~by IBS~~ on the account for meter 979 from May to August, 1993 were ~~both estimated and flawed~~ based on actual meter readings (actual readings in May, July and August) and that ComEd followed standard practices approved by the Commission when applying a two-month demand reading to the bills issued for May-June and June-July.

~~Is it likely, then, that~~ Americana's total actual demands were ~~beneath~~ over the 500 kw threshold in those months. Actual demand on meter 979 for the *separate* May-June and June-July billing months ~~cannot be determined from the record~~ were based on the actual May and July readings. As discussed here, there is ~~only the~~ a *two-month* increment of 4.06 between actual readings in May and July. ~~Since~~ ComEd applied this increment to *each of* the billing months of May-June and June-July~~, the Commission will, by the same logic, divide it by two (4.06/2 = 2.03) to establish a surrogate for actual demand on meter 979 in each of those months. Multiplying 2.03 by the applicable constant of 60, we find that 121.8 is an acceptable computation of demand for meter 979 in both May-June and June-July~~ in accordance with standard practices used when a reading is missed and the demand reading needs to be applied to each bill. ~~When~~ Americana's billed total demands for each of those months (572.4, Americana Ex. 1.1) ~~are correspondingly reduced by 121.8, the remainder is 450.6. Therefore, we find that Americana did not reach~~ was over the 500 kw threshold in ~~either~~ both months.

~~[31] "Transfer account to IBS customer using over 500 kw demand." ComEd Ex. 2.1.~~

The Commission's review of ~~will make similar calculations for~~ the July-August actual demand~~s~~ readings taken from the TTR shows ~~. Subtracting 121.8 from billed total demand of 619.0 (which includes the flawed estimate for meter 979), there is a remainder of 497.2. Consequently, the Commission find~~ that Americana ~~did not reach~~ was again over the 500 kw threshold in July-August.

Americana's August 12-September 13, 1993 bill was ~~apparently~~ also derived from actual demand readings. ComEd Ex. 2.1. Accordingly, based on our previous finding that meter 979 functioned satisfactorily, we hold that the demands recorded on that meter were correct. We note~~, however,~~ that in section II.C. of this Order, below, the Commission finds that meter G250980 was ~~incorrectly~~ read correctly for the billing period. Consequently, ~~we are reducing the demand for which Americana should have been billed during that month. Nevertheless, even that reduced demand, when added to the other demands recorded during the month (including~~ the demand recorded on meter 979~~)~~, as well as on the other meters, puts Americana over the 500 kw threshold in the August-September bill period.

In sum, we hold that Americana's total demand ~~did not reach or~~ exceeded 500 kw in ~~three~~ each of the four months analyzed (May-June, June-July, ~~and~~ July-August, and August-September). Thus, Americana's ~~did not~~ demand exceeded the 500 kw threshold in three of twelve billing months. Accordingly, we conclude that, in accordance with ComEd's tariff, Americana should ~~not~~ have been switched to Rate 6T. Therefore, ComEd ~~must~~ does not owe Complainant a refund for the difference between actual billing on Rate 6T and the amount Americana would have been billed from the ~~May-June~~ August-September 1993 billing month until the June-July 1999 billing month~~, with associated interest~~[32]. ~~ComEd must also refund the difference between actual billing for demand for the three pertinent months (May-June, June-July and July-August 1993) and the amount we calculate here as erroneously billed (that is, 121.8 kw in each month), with associated interest. The amount of Americana's refund, as defined here, is not apparent from the record. That amount will need to be determined in the manner described later in this Order.~~

The Commission is aware of ComEd's concern that its meters be perceived, by us and by customers, as trustworthy[33]. ~~However, to be entirely clear, o~~Our finding here is ~~*unrelated to the accuracy of ComEd's meter*. O~~ consistent with our conclusion ~~is, instead, that personnel made mistakes, in performance or judgment, that resulted in inaccurate demand estimates that went~~

[32] In the preceding section of this Order (II.A.2), we held that ComEd must refund the difference in charges under Rate 6 and Rate 6T for the months of June-July and July-August 1993. Our conclusion in this section of the Order, ~~has the same effect. T~~to be clear, is *not* that Americana is ~~*not*~~ entitled to ~~double~~ recovery of the difference between the energy charges (the demand charges are the same) under Rate 6T and Rate 6 due to this issue being settled in 1994 and now being time barred under the provisions of 9-252 and 9-252.1.

[33] E.g., "ComEd relies on its meters to record the customer usage and to issue bills to the customer based on the usage." ComEd Rep. Br. at 24.

~~uncorrected and wrongly inflated Americana's total billed demands during the months identified above. Again, we do not conclude~~ that there is no evidence that meter 979 malfunctioned.

B. Overcharges for the Period May 13, 1992 to June 14, 1992

Americana charges that for the two billing months starting on May 13, 1992 and ending on July 14, 1992, ComEd erroneously doubled the demand for meter G250980 ("meter 980"). Americana contends that this error produced overcharges of $2,333.30, plus interest and taxes. ComEd replies that the disputed bill covered two months, and that ComEd uses the same demand reading for each month of a two-month bill.

Nevertheless, Americana stresses that the disputed demand (179.4 kw) was significantly larger than the demand registered in any other month. ComEd counters that if Americana's demand were cut in half (to correct Americana's claim that demand was erroneously doubled), the resulting demand (89.7 kw) would be the "lowest demand billed on this meter for the entire 87-month bill period in question." ComEd Ex. 1.0 at 13.

Record evidence shows that during the parallel billing months (mid-May through mid-July) in subsequent years, meter 980 and its replacements recorded demand as high as 142.2 kw and as low as 99.5 kw (estimated) or 110.4 kw (actual). Americana Ex. 1.1. (In the only other year (1993) when demand was measured during the parallel months by meter 980 in particular, demand was 139.2 kw. *Id*.) Thus, neither the billed demand that Americana challenges (179.4 kw), nor the half that ComEd characterizes as too low (89.7 kw), depart unreasonably from historic norms. Furthermore, the departure is only slightly greater on the high end (about 21%) than the low end (about 10% estimated, but about 19% actual). Consequently, Americana's inference that demand in May-July 1992 was abnormally high does not have significantly more evidentiary support than ComEd's inference that one-half of that demand would be abnormally low.

If we assume that the registered demand in the *first* month of the two-month period is the key determinant (that is, if the first month's demand, rather than the second month's demand, is duplicated for two-month billing purposes), then the May-June demand is paramount. After 1992, the demand registered in May-June on meter 980 and its replacements was as high as 139.2 kw and as low as 110.4 kw (actual) or 99.5 (estimated). *Id*. (Again, in the only other year (1993) when demand was measured during the parallel months by meter 980 in particular, demand was 139.2 kw. *Id*.) Thus, when the May-June billing interval is viewed in isolation, a 179.4 kw demand is marginally more abnormal on the high end (about 23%) than the estimated low end (about 10%) or the actual low end (19%). Therefore, the inference that demand in May-June 1992 was abnormally high does not have significantly more evidentiary support than ComEd's inference that one-half of that demand would be abnormally low.

Americana additionally asserts that for the demand billed by ComEd to be correct, Americana's load factor would have to have inexplicably dropped to 54%, compared to an "average" range of 80% to 97% in all other months. Americana Ex. 1.0 at 11. However, ComEd responds that an episodic reduction in load factor is not atypical. Indeed, ComEd notes, in the following year (1993), the load factor in the first month (May-June) of the parallel two-month period was 56%. ComEd Ex. 1.0 at 13.

ComEd also emphasizes that the disputed demand was within the measuring range of meter 980, and that the meter tested within Commission guidelines following removal from Americana's premises. ComEd Ex. 3.2. This is consistent with Americana's acknowledgement that its kilowatt hours of usage were "not out of line with the other ninety-two months of data." Americana Ex. 1.0 at 11. Thus, if meter 980 malfunctioned, it did so by registering a non-existent demand spike, but not by inaccurately registering cumulative usage.

The question, then, is whether the high demand registered in May-June 1992 actually occurred or reflects a measurement error. Although ComEd speculates that Americana may have "switched on cooling equipment late in the first month," ComEd Ex. 1.0 at 14, it is unlikely that meter 980 was associated with Americana's air chiller[34]. Nonetheless, there is only inferential statistical evidence (discussed above) that meter 980 malfunctioned in demand measurement during the disputed billing interval, and that inference is, at best, weak. Moreover, meter 980 performed within historical norms after the disputed billing until its removal in September 1993[35], and it tested satisfactorily thereafter.

Therefore, given that the burden of proof in this complaint proceeding is on Americana, the Commission cannot find that meter 980 measured demand incorrectly during the May-July 1992 billing periods.

C. Overcharges for Billing Month August 12, 1993 to September 13, 1993

Americana charges that billed demand for the August 12, 1993 to September 13, 1993 bill period was erroneously increased when meter 980 was

[34] Meter G036235 and subsequent replacements are more likely to be associated with Americana's chiller. Demand on those meters spiked annually in the May-June billing month and returned to near-zero in the September-October billing month. Americana Ex. 1.1.

[35] Americana does present evidence that meter 890 recorded abnormally high demand in the August-September 1993 billing period. Americana Ex. 1.1. However, Americana attributes this anomaly to a "double-punch" by a ComEd employee, not to meter malfunction. We assess the alleged double-punch in the next section of this Order.

apparently double-punched[36] by ComEd personnel, doubling the demand to an abnormally high 196.2 kw. Americana emphasizes that meter 980 was replaced three days after the end of the billing period, after which the demand recorded by the replacement meter returned to the normal range and remained there for the next 155 months[37]. Americana quantifies the purported over-billing error at either $1426.37 or, if the "calculated value" appearing on ComEd Ex. 2.2 is utilized, $942.19.

ComEd replies that meter 980 was capable of correctly reading demand in excess of 300 kw and, when tested on September 29, 1993, registered accurately. ComEd Ex. 3.2. ComEd also presents actual meter readings in the TTR (ComEd Ex. 2.1) for meter 980 that show a double activation of the meter did not occur. These details, while presumably true, are not responsive to Americana's claim, which concerns purported human error when reading meter 980, not the meter's accuracy.

ComEd also ~~argues~~ noted that billed demand for the August 12 to September 13, 1993 bill period should have been even higher – 261 kw, rather than 196.2 kw. ComEd Rep. Br. at 16. According to ComEd, it re-billed Americana in October 1993, after retroactively averaging two separately recorded demands for, respectively, the period from August 12 to August 26 (131.4 kw) and the period from August 26 to September 16 (261 kw). *Id*. The average for those two separate demands was 196.2. ComEd ~~insists now~~ stated that Americana "should have been billed for the high demand of 261.0 kw that registered on the meter." Although the billing clerk billed the customer based on average demands, ComEd states that it should have billed the customer for the highest demand from August 12 to September 13 which would have accounted for 261 kW of demand based on an actual August 26 reading as shown in the TTR. *Id*.

~~ComEd's argument is puzzling.~~ ComEd does ~~not~~ explain why the two separate demands were used during the billing period in order to give the customer the benefit of the lower demand. ~~Nor does ComEd provide either an explanatory rationale or a legal basis for averaging two demands for billing purposes.~~ ComEd ~~also~~ does ~~not~~ establish that the ostensibly high demand (261 kw) during the August 12-September 13 billing period in question was based on an actual demand reading on August 26 and September 16 as shown in the TTR. ~~That demand may have occurred, if at all, during the September 14-16 interval included in the re-issued bill[38].~~ If the higher demand had occurred in the 9/14 to

[36] A double-punch, more formally known as a double activation, Tr. 405 (Scherer), occurs ~~does not completely reset the demand dial on a cumulative meter after reading peak demand. Tr. 179 (Shifrin). "[T]he next month when it's read, it's double the amount that it would have been." *Id*.~~ when a vandal or meter reader activates the demand meter a second time. Tr. 445 (Scherer)

[37] The source of this 155-month figure is not apparent. Americana's documentary evidence addresses fewer than 100 months.

~~[38] Why the September 14-16, 1993 interval was included in ComEd's calculation of Americana's August 12-September 13, 1993 bill is not clear to the Commission.~~

9/16 period, ComEd would have billed that demand on the September-October bill, which it did not (Americana Ex. 1.1 bill statements). Further, the demand ComEd assigned to the August 12-26 period (131.4 kw) is approximately one-half the demand ComEd assigned to the August 26-September 16 period. The former demand is typical of the demands registered by meter 980 or its replacements during the August-September period over several years. Americana Ex. 1.1. The latter demand (261 kw) is ~~grossly~~ out of proportion to all demands recorded on those meters during the August-September time frame. However, a high reading in comparison to other readings does not mean that Americana did not actually establish such a demand.

~~Since meter 980 was removed and replaced on September 16, 1993, the inference arises that a double-punch, as alleged by Americana, was completed on that date. It is more likely than not that~~ ComEd personnel ~~who~~ removed and replaced four meters at the premises ~~that day, Americana Ex. 1.1, made an ordinary human error overlooking the previous error to completely reset the demand dial on meter 980.~~on September 16, 1993. (ComEd Ex. 2.1)

~~Again, o~~Our finding here is ~~unrelated to~~ that ~~accuracy of ComEd's meter. Our conclusion is that human error resulted in an inaccurate~~ the readings of the peak demand were recorded by a properly functioning meter and are shown in the TTR. There is no record evidence that meter 980 malfunctioned and, as already noted, it tested satisfactorily after removal.

That said, ComEd also contends that Americana agreed to settle certain disputes concerning on-peak and off-peak usage and that the August-September 1993 billing period was included in that agreement. But that agreement regarded the classification of energy usage and there is no evidence that it actually addressed the dispute here concerning peak demand. Therefore, the agreement has no relevance to the latter issue.

Americana is not entitled to a refund of $942.19 ~~because of the forgoing~~ for a billing error or the larger amount proposed alternatively by Americana~~ is inappropriate since~~. The Commission concludes that ~~131.4~~196.2 kw approximates the correct peak demand during the relevant time period and Americana's damage claim is denied. ~~Accordingly, the difference the incorrectly billed demand of 196.2 kW and 131.4 kW constitutes Americana's damage.~~

D. Overcharges for Billing Month June 13, 1994 to July 13, 1994

For the billing month June 13, 1994 to July 13, 1994, meter #G101966 ("meter 966) registered 100kw of demand, although the historical demand on this meter had typically been zero. Moreover, meter 966 recorded no energy usage during that billing period. Americana contends that ComEd's meter reader "likely read the meter's demand as a dial turnover at 99.99." Americana Init. Br. at 22.

The result of this purported mistake was an over-billing of $1,105.00, according to Americana's calculations.

ComEd concedes that meter 966 was read erroneously for this billing month, "resulting in a billed demand for the meter of 100 kw when it should have read 0 kw." ComEd Ex. 1 at 16. However, ComEd emphasizes, Americana failed to produce a billing statement for the billing period occurring three months later (September 12, 1994 to October 11, 1994). That statement, ComEd conjectures, "*may have*" shown a billing adjustment for the admitted overcharge. *Id*. (emphasis added).

In effect, ComEd attempts to turn the burden of proof on its head, requiring Americana to *disprove* ComEd's purported defense that this dispute may have been settled through some form of accord and satisfaction between the parties. However, it is sufficient for Americana to establish (indeed, in this instance, for ComEd to admit) that Americana was overcharged due to a billing error. The burden of sustaining a viable defense of subsequent settlement lies with ComEd. Americana has no obligation to disprove that defense until ComEd first proves it. ComEd did not to do, principally because it claims not to have records that would enable it to do so[39].

Instead, ComEd endeavors to support its speculation regarding a later settlement with additional speculation about a hand-written notation ("called for billing adjustment") that appears on Americana's October 11, 1994–November 9, 1994 billing statement. ComEd Ex. 1.11. No evidence connects this notation to the admitted overcharge for the June 13, 1994 to July 13, 1994 billing period.

ComEd does not dispute Americana's calculation of the associated overcharge at $1,105.00. That amount should be refunded to Americana.

E. Overcharges for Billing Month May 11, 1995 to June 12, 1995

Americana asserts that meter W554944 ("meter 944") (installed at Americana's premises on May 30, 2005) recorded an energy demand of 19.5 KW during the May 11, 1995-June 11, 1995 billing period, but showed no recorded energy usage. Americana Ex. 1.0 at 14. Since meter 944 could not properly record energy demand with zero energy consumption, Americana argues that it was erroneously charged $200.34 for demand that never occurred.

[39] We observe that ComEd has successfully retrieved or re-created Americana billing and payment information for other pertinent billing months, using data available to it. *E.g.*, ComEd Ex's. 1.13-1.16. So, too, has Americana, and ComEd agrees that Americana's calculations are "reasonable." Tr. 240 (Miller). ComEd's failure to do so in this instance is likely associated with its erroneous assumption that it has no burden of proof regarding its affirmative defense of prior settlement.

ComEd agrees that the billed 19.5 KW was in error, ComEd Ex. 1.0 at 21, but maintains it subsequently corrected that error and issued appropriate credit. According to ComEd, its next bill, issued on July 27, 2005, accurately reflected actual energy usage and a peak demand of 1.5 kw during the pertinent time period. That 1.5 kw demand is within the range of demands recorded by meter 944 for the next 134 months (0.8 kw to 2.0 kw) and is the same estimated demand used by Americana witness Shifrin to calculate Americana's purported damages. Americana Ex. 1.0 at 14. Furthermore, ComEd's IBS transcripts show that a credit of $5414.38 was issued on Americana's August 16, 1995 bill, associated with Americana's service in the June 12, 1995-July 12, 1995 billing period. ComEd Ex. 1.0 at 22. ComEd maintains that this credit includes correction of the initial error regarding the May 11, 1995-June 11, 1995 billing period. *Id*.

As Americana forthrightly recognizes, whether the May 11-June 11, 1995 billing error was, in fact, corrected by ComEd's subsequent actions is "quite difficult to ascertain." Americana Init. Br. at 25. ComEd's interpretation of its own IBS transcripts, while self-serving, is nevertheless not meaningfully rebutted (though it is denied) by Americana. Significantly, ComEd's evidence does show that its initial incorrect billings were revoked by "cancel orders," thus supporting ComEd's assertion that the May 11, 1995-June 11, 1995 billing period was addressed by the credit reflected on Americana's August 16, 1995 bill. ComEd Ex. 1.13. Accordingly, the Commission must conclude that ComEd has presented enough evidence to sustain the inference that outstanding overcharges during the May 11, 1995-June 11, 1995 billing period were subsequently corrected. Americana has offered no evidence, other than the existence of the original error, to overcome ComEd's defense of subsequent settlement.

F. Overcharges for Billing Month August 10, 1995 to September 11, 1995.

For the billing month of August 10, 1995 to September 11, 1995, Americana alleges that ComEd committed two billing errors. First, Americana contends that meter G787035 ("meter 035") recorded a peak demand of 35 kw, which was two to six times historic normal demand, resulting in an over-billing of $249.20. Americana witness Shifrin states that this purportedly incorrect demand is the result of a double punch at the meter by ComEd personnel. Americana Ex. 1.1. Americana argues that the registered demand of 35 kw is "within realm of overbilled demands that ComEd normally provides refunds to customers for." Americana Ex. 2.0 at 13.

ComEd responds that meter 035 was capable of registering the recorded demand. ComEd also stresses that energy usage during the pertinent billing period was atypically high - indeed, the highest during the seven months when meter 035 was in service - reflecting consistency between usage and demand. ComEd Ex. 1.0 at 23.

Thus, ComEd's defense is that unusually high consumption permits the inference that unusually high demand was accurately recorded. The Commission notes that energy consumption at Americana's premises during the August 10-September 11, 1995 billing period was, in fact, among the very largest recorded during the 93 billing months appearing on Americana's Exhibit 1.1. And Americana has not alleged that ComEd's measurement of energy consumption during the August 10-September 11, 1995 billing period was incorrect. Nevertheless, ComEd's defense (high consumption is consistent with high demand), is merely an hypothesis. High energy consumption could reflect atypically steady usage rather than high peak demand.

That said, however, Americana's double-punching claim is also an hypothesis. A recording of unusually high demand is, at the least, just as indicative of genuinely high demand as it is indicative of reader error. Consequently, without additional evidence or legal presumptions, Americana's claim of error is no more likely than ComEd's rejoinder that high demand is linked to proven high consumption. As for the "realm of overbilled demands" described by Americana's witness, even if such realm exists, a claimant would first have to demonstrate that demand was actually "overbilled." There is no additional proof, other than the high recorded peak itself, to satisfy Americana's burden. Therefore, no refund is warranted.

Second, Americana contends that the recorded demand (32.6 kw) on meter W755458 ("meter 458") in the August 10-September 11, 1995 period was two to ten times greater than normal historical demand, generating an excessive bill of $232.11. We note that this billed demand resulted from an estimate, not an actual reading. Since meter 458 was placed in service at Americana on May 11, 1995, and since it was not included in either Americana's revised bill for May 11-June 12, 1995 or its bill for July 12-August 10, 1995, and since the actual recorded demand on meter 458 for the initial June 12-July 12, 1995 bill was only 13 kw, there is no apparent justification for ComEd's estimation of peak demand for August 10-September 11, 1995 at 32.6 kw[40].

ComEd replies that the sequence of events concerning meter 458 from May to September 1995 (initial setting, removal, and re-setting on Americana's account) is "an indication" that ComEd was working with Americana to establish a new point of service at the premises. ComEd Ex. 1.0 at 25. We do not see how that fact, by itself, justifies the 32.6 kw peak demand estimate. To the

[40] In Americana Ex. 1.1, Mr. Shifrin indicates that this allegedly erroneous demand resulted from a double punch. The Commission does not perceive a relationship between an *estimated* peak demand and a double punch by a meter reader. Furthermore, there is no evidence that the meter was read after the June-July 1995 billing period (and before the August-September 1995 bill was prepared). Accordingly, we disregard Mr. Shifrin's suggestion.

contrary, the fluctuating circumstances surrounding meter 458 are consistent with a mistaken estimate of peak demand. Furthermore, after meter 458 was reset in August 1995, actual (not estimated) subsequent peak demands matched or approximated the actual 13 kw peak recorded in June-July 1995, not the 32.6 kw estimate in August-September. Americana Ex. 1.1. There was an exception, in the May 9-June10, 1996 billing period, when actual demand was read at 27 kw, but ComEd treated that as an error, reduced demand by 15.3 kw and adjusted Americana's bill. ComEd Ex. 1.0 at 30.

Nonetheless, ComEd stresses that Americana's bill for the August-September 1995 period "shows a previous credit…that *may have been* the result of an adjustment worked on the bill to address the addition and subtraction of meter [458] to the account." *Id*. (emphasis added). This assertion is not only equivocal; it also pertains, *ipso facto*, to adjustments to items *other than* the peak demand estimate for August-September 1995, which appears - *without adjustment* - on the August-September 1995 bill. Similarly, while ComEd additionally complains that Americana did not produce its revised June-July 1995 bill (issued on August 16, 1995), that revised bill could not have addressed peak demand estimated for meter 458 in the August-September period[41].

Therefore, Commission finds that record evidence proves it is more likely than not that peak demand was erroneously estimated for meter 458 during the August 10-September 11, 1995 period. Because Mr. Shifrin's calculation for that error is undisputed, Americana is entitled to a refund of $232.11.

G. Overcharges for Billing Month August 11,1998 to September 10, 1998

Americana argues that ComEd erroneously billed for a peak demand of 28 kw during the August 11, 1998 to September 10, 1998 billing interval. Americana contends that this demand is approximately double the actual demands registered on the relevant meter, number W771081 ("meter 081"), during all preceding and subsequent months addressed by Americana's evidence. Therefore, Americana asserts that ComEd personnel mistakenly double-punched meter 081, causing an overcharge of $199.36.

ComEd rejoins that Americana's claim is no more than an inference, since there is no direct evidence of a double-punch on meter 081. Additionally, ComEd points out, the usage readings recorded by meter 081, as shown on bills immediately prior to and after the August-September 1998 bill period, correspond

[41] Moreover, as the Commission holds elsewhere in this Order, Americana need not produce evidence to overcome a ComEd defense until ComEd first establishes an evidentiary or presumptive basis for that defense. ComEd's speculation that a missing document might have established ComEd's defense is insufficient to shift to Americana the burden of producing that document.

with the usage readings on the August-September 1998 bill, indicating correct measurement by meter 081 during the disputed period. ComEx. 1.0 at 30.

The Commission notes, however, that the "previous and present" readings emphasized by ComEd do not pertain to demand. While a cumulative meter registers usage cumulatively (as the name suggests), the demand dial on a cumulative meter, when properly read, it is reset to zero. Tr. 179 (Shifrin). And when demand is read improperly (i.e., when double-punched), it does not affect the cumulative usage registered by the meter. Tr. 178-9 (Shifrin). So ComEd's defense does not address Americana's allegation.

As the Commission observed, above, when the predecessor to meter 081 (meter 458) registered a demand of 27 kw during the May 9-June10, 1996 billing period, ComEd regarded that as an error, then reduced demand and adjusted Americana's bill. ComEd Ex. 1.0 at 30. All readings between June 1996 and August 1998 (on meters 458 and 081), and all readings for which there is evidence subsequent to September 11, 1998 (on meter 081), are approximately one-half of the 27 kw reading in 1996 (which ComEd treated as a mistake) and one-half of the 28 kw reading in the pertinent month here (August-September 1998)[42]. Given this extensive demand and consistent history regarding meters 458 and 081 (in contrast to the limited history for meter 035, discussed above), and given ComEd's treatment of the 27 kw demand reading in 1996 as an error, the Commission finds it more likely than not that the 28 kw reading in August-September 1998 is also an error, presumably due to double-activation by ComEd personnel. As a result, Americana is entitled to a refund of the undisputed amount of $199.36.

Once again, our finding here is unrelated to meter accuracy. Rather, we hold that human error resulted in an inaccurate reading of a properly functioning meter. There is no record evidence that meter 081 malfunctioned.

H. Overcharges for Billing Month June 10, 1999 to July 12, 1999

For the billing period from June 10, 1999 to July 12, 1999, Americana was billed for total energy consumption (337,112 KWH) far above Americana's historical usage range during the preceding several years (starting in October 1991). Americana Ex. 1.1. Americana alleges that ComEd must have incorrectly measured Americana's energy consumption during the billing period, based on a load factor analysis demonstrating that the entire building's load would have needed to operate 99% of the time for 32 days, 24 hours a day, to yield the billed usage. Amer. Init. Br. at 29; Tr. 379 (Geraghty). Americana calculates the erroneous overcharge at $8246.52.

[42] There were also ComEd demand estimates in certain months, each of which were substantially below all actual demand readings. Americana Ex. 1.1.

ComEd replies that it has already credited Americana with a $3453.76 refund, reflecting Americana's election, in mid-1999, to take service under Rate 6 rather than the more expensive Rate 6T. ComEd Rep. Br. 24-25; ComEd Cross Ex. 1. This does not respond to Americana's claim, however. That claim concerns the number of kwh consumed, not the rate under which it was billed.

The more relevant issue is whether Americana has established an evidentiary basis for a finding that the consumption measured by ComEd during the June 10 to July 12, 1999 period was measured or read incorrectly. At least six meters recorded demand during that billing period. Americana Ex. 1.1. With one exception, Americana does not allege that any of those meters malfunctioned, or that their usage totals were misread or misreported. Mr. Shifrin does mention "incorrectly billed usage" on meter G733658 ("meter 658"), Americana Ex. 2.0 at 14, but does not explain how or why consumption registered by meter 658 was measured, read or reported incorrectly. Indeed, there is no record evidence at all quantifying the energy consumption recorded by meter 658. All that is known is that meter 658 registered a peak demand within that meter's historical range. Americana Ex. 1.1.

Thus, Americana asks the Commission to find that its measured energy usage was too high because it was very high. While a bill for unusually high consumption could be erroneous, it could also simply reflect unusually high usage, accurately measured. Since Americana's allegation rests on the high load factor calculated for the billing period - 98.8%, Tr. 378 (Geraghty) – Americana's inference of error is dependent upon the uniqueness of that factor. However, Americana's load factor was 98% in both the parallel billing month of June 12-July 12, 1995 and in the September 11-October 10, 1995 billing month. ComEd Ex. 1.1. Accordingly, even though Americana's usage in June-July, 1999 is unusually high, its load factor is not. Therefore, given the evidentiary record before us, there is no basis for the conclusion that ComEd mistakenly measured and billed Americana's kwh in the relevant month.

I. Withdrawn Claims

Over the course of this proceeding, Americana withdrew two claims, after reviewing information provided by ComEd. These claims pertain to the billing periods of May 9, 1996 to June 10, 1996, and October 8, 1996 to November 6, 1996. The Commission presumes that these erstwhile disputes have been settled and makes no findings or conclusions concerning them.

J. Refund Mechanism and Schedule

Insofar as we have concluded in this Order that ComEd has overcharged Americana for electricity, ComEd must make appropriate reimbursement. To avert confusion and dispute with regard to such reimbursement, the Commission will establish a methodology and schedule for the parties. No later than 15 days after entry of a final Order in this proceeding, ~~Americana will present to~~ ComEd will present a calculation of principal and interest for each overcharge found by the Commission in this proceeding. Such interest shall accrue ~~until the 30th date following the date of entry of a final Order in this proceeding. Americana shall calculate such interest by using the same methodology it has used heretofore in this proceeding~~ at the rate and in accordance with terms allowed by the Commission.

~~No later than 15 days after receiving Americana's reimbursement calculation, ComEd shall notify Americana that ComEd either accepts or rejects (with reasonable cause) Americana's calculation. If ComEd accepts Americana's calculation, it~~ ComEd shall issue a single bill credit to Americana in the aggregate amount of overcharges (including applicable portions of taxes and other levies of any kind associated with such overcharges) and interest (as calculated pursuant to this Order). Such bill credit shall be applied to the next full monthly billing period that commences on or after the 16th day ~~after ComEd receives Americana's interest calculation~~ completes such calculation.

~~If ComEd rejects (with reasonable cause) Americana's reimbursement calculation, ComEd may, no later than 15 cays after notifying Americana of such rejection, file a motion under the Commission's Rules of Practice requesting that this proceeding be reopened to resolve the parties' dispute regarding the reimbursement calculation. ComEd may withhold issuance of the bill credit described above, but only if such motion is filed and only until such motion is resolved. Failure to timely file such a motion will be deemed a waiver of objection to Americana's reimbursement calculation[43], and ComEd shall reimburse Americana in the manner described above, as if no rejection of Americana's reimbursement calculation had occurred.~~

K. Americana's Expert Witness

ComEd stresses that Americana's expert witness, Mr. Shifrin, has a contingent fee arrangement with Americana, by which he will receive a percentage of any refund secured by Americana in this proceeding. ComEd Init. Br. at 18. ComEd argues that this fee arrangement "detracts greatly from the credibility of [Mr. Shifrin's] testimony." *Id*. This assertion does not go to Mr. Shifrin's expertise, which ComEd does not challenge[44], but to the likely veracity of his testimony.

~~[43] This motion pertains only to the mechanism and schedule we establish for reimbursement and the calculation of interest. It shall have no effect upon, nor shall it be effected by, either party's right to present any other motion under our rules or governing statutes or to seek rehearing under Section 10-113 of the Act. 220 ILCS 5/10-113.~~

[44] Indeed, ComEd itself mentions the witness's "twenty-eight year career with ComEd and his thirteen years as an independent analyst of ComEd electric bills for purposes of finding past billing errors." ComEd Init. Br. at 16.

The Commission concurs that it is appropriate to view a witness's testimony in light of the witness's interest in the outcome of a dispute. Consequently, we have considered whether Mr. Shifrin's testimony is consistent with the documentary evidence offered by both parties and with the logic and regulatory principles we apply to resolve contested cases. Thus, our findings and conclusions here are supported by the totality of the evidence, and not solely by opinions or analysis from Mr. Shifrin. Furthermore, while we are mindful of Mr. Shifrin's interest in securing refunds for Americana, we also note that he has testified under oath and we are not aware of anything in the record that would demonstrate disregard for that oath.

Additionally, the Commission observes that witnesses in our contested proceedings often have interests and affiliations that could potentially affect the testimony and evidence they offer. Just as consultants have an interest in obtaining favorable outcomes for the entities that hire them, so, too, do the personnel of the utilities we regulate and the customers they serve. In addition to their essential loyalty to their employers, we note that utility and customer witnesses frequently have pecuniary interests associated with compensation, promotion, profit-sharing, bonuses and forms of ownership (such as stock holdings). Accordingly, the Commission utilizes the oath it administers, the scrutiny of its ALJs and a careful sifting of evidence, in order to detect the influence of a witness's interests on the veracity of his or her testimony. Those measures were duly utilized here, with respect to all witnesses.

As for ComEd's citation to the Illinois Rules of Professional Conduct (part of the Rules of the Illinois Supreme Court), the Commission observes that such rules govern the conduct of attorneys, not of witnesses before the Commission. Mr. Shifrin is not an attorney.

III. FINDINGS AND ORDERING PARAGRAPHS

The Commission, after reviewing the entire record and being fully advised in the premises, is of the opinion and finds that:

(1) Respondent, Commonwealth Edison Company, is an Illinois corporation, engaged in furnishing utility services in the State of Illinois and, as such, is a public utility within the meaning of the Illinois Public Utilities Act;

(2) the Commission has jurisdiction over the complaint and the subject matter of this complaint, except as set forth in this Order;

~~(3) ComEd classified and measured Americana's peak electricity demand under Rate 6T for the two billing periods starting on June 14, 1993 and ending on August 12, 1993 in derogation of ComEd's tariffs, resulting in refundable overcharges and interest in an~~

~~amount to be calculated as directed in section II.J. of this Order**;** however, Americana is not entitled to a refund of any overcharges described in this Finding that are refunded pursuant to Finding (4), below;~~

~~(4) ComEd erroneously estimated Americana's peak demand on meter 979 during the billing months of May-June, June-July and July-August of 1993, thereby: a) wrongly estimating the total peak demand at Americana's premises at above 500 kw during each of those months, resulting in the transfer of Americana's account to Rate 6T in derogation of ComEd's Rate 6 tariff, which does not authorize such transfer unless the customer has reached or exceeded 500 kw of demand in three of twelve consecutive billing months; and b) erroneously billing Americana for 121.8 kw of demand in each of the three pertinent months; these errors resulted in refundable overcharges and interest in an amount to be calculated as directed in section II.J. of this Order**;**~~

~~(5) ComEd erroneously measured Americana's peak electricity demand during the billing period of August 12, 1993 to September 13, 1993, resulting in refundable overcharges and interest in an amount to be calculated as directed in section II.J. of this Order**;**~~

~~(6)~~(3) ComEd erroneously measured Americana's peak electricity demand during the billing period of June 13, 1994 to July 13, 1994, resulting in refundable overcharges and interest in an amount to be calculated as directed in section II.J. of this Order**;**

~~(7)~~(4) ComEd erroneously measured Americana's peak electricity demand during the billing period of August 10, 1995 to September 10, 1995, resulting in refundable overcharges and interest in an amount to be calculated as directed in section II.J. of this Order**;**

~~(8)~~(5) ComEd erroneously measured Americana's peak electricity demand during the billing period of August 11, 1998 to September 1, 1998, resulting in refundable overcharges and interest in an amount to be calculated as directed in section II.J. of this Order**;**

~~(9)~~(6) With respect to all other alleged ComEd errors and associated overcharges addressed in this proceeding, Americana has not met its burden of proving its allegations and, accordingly, the Commission does not find or conclude that ComEd committed errors or that Americana was overcharged for electricity;

~~(10)~~(7) ComEd shall refund to Americana the overcharges and interest described in Findings (3) through (~~8~~5), above, in the manner and pursuant to the schedule described in section II.J. of this Order;

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the present complaint by Americana Towers Condominium Association against Commonwealth Edison Company is sustained as described in Findings (3) through (~~8~~5) above, and that ComEd shall refund to Americana all associated overcharges and interest, in the manner and according to the schedule set forth in section II.J. of this Order.

IT IS FURTHER ORDERED that the present complaint by Americana Towers Condominium Association against Commonwealth Edison Company is denied with respect to all claims not sustained as described in Findings (3) through (~~8~~5) above.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.