

For Commission Use Only:

Case:

08-0401

OFFICIAL FILE
ILLINOIS COMMERCE COMMISSION

FORMAL COMPLAINT

Illinois Commerce Commission
527 E. Capital Avenue
Springfield, Illinois 62701

ORIGINAL

Regarding a complaint by (Person making the complaint): MALIBU CONDOMINIUM ASSOCIATION

Against (Utility name): Commonwealth Edison Company

As to (Reason for complaint) Refund our Overcharges/Overpayments for electricity with interest

CHIEF CLERK'S OFFICE
2008 JUN 24 A 8:26
ILLINOIS COMMERCE COMMISSION

in Chicago, Illinois.

TO THE ILLINOIS COMMERCE COMMISSION, SPRINGFIELD, ILLINOIS:

My mailing address is MALIBU CONDOMINIUM ASSOCIATION % Lynn Cohen
6007 N. Sheridan Road - Chicago, Illinois 60660

The service address that I am complaining about is 6007 N. Sheridan Road in Chicago, IL 60660

My home telephone is []

Between 8:30 A.M. and 5:00 P.M. weekdays, I can be reached at Tel: [773] 334-3313 Fax: (773) 334-1326

My e-mail address is _____ I will accept documents by electronic means (e-mail) Yes No

(Full name of utility company) Commonwealth Edison Company (respondent) is a public utility and is subject to the provisions of the Illinois Public Utilities Act.

In the space below, list the specific section of the law, Commission rule(s), or utility tariffs that you think is involved with your complaint.

- 83 Illinois Administrative Code Section 280.75 Refunds
- Illinois Commerce Commission Public Utilities Act 5/9-252.1 Refunds
- Illinois Commerce Commission Public Utilities Act Article IX Sec. 9-101 Rates
- Illinois Commerce Commission Public Utilities Act Article IX Sec. 9-102 & 9-104 Rates
- Illinois Commerce Commission Public Utilities Act Article IX Sec. 9-240 & 9-241 Rates
- Illinois Commerce Commission Public Utilities Act Article IX Sec. 9-252 Rates
- Rate 6 Tariff and Rate 14 Tariff

Have you contacted the Consumer Services Division of the Illinois Commerce Commission about your complaint? Yes No

Has your complaint filed with that office been closed? Yes No

Please state your complaint briefly. Number each of the paragraphs. Please include time period and dollar amounts involved with your complaint. Use an extra sheet of paper if needed.

Re: ComEd Account #1310169004 (I.C.C. Informal Complaint #2007-18822)

1. ComEd made a mistake when they changed our rate from a Residential Rate 14 to a Commercial Rate 6 on 11/22/99.
2. See the attached 16 pages of text plus our 16-page spreadsheet of calculations of overcharges/overpayments plus copies of letters, e-mails, etc. plus copies of ComEd's electric billings to Malibu which were rendered on the wrong rate, "billed wrong tariff".

Please clearly state what you want the Commission to do in this case:

Compel Commonwealth Edison Company to refund our overpayments for electricity, with interest, from the date of overpayment, which now totals \$403,282.34 as of 06/30/08.

NOTICE: If personal information (such as a social security number or a bank account number) is contained in this complaint form or provided later in this proceeding, you should submit both a public copy and a confidential copy of the document. Any personal information contained in the public copy should be obscured or removed from the document prior to its submission to the Chief Clerk's office. Any personal information contained in the confidential copy should remain legible. If personal information is provided in your public copy, be advised that it will be available on the internet through the Commission's e-Docket website. The confidential copy of any filing you make, however, will only be available to Commission employees. If you file both a public and confidential version of a document, clearly mark them as such.

Today's Date: June 13, 2008
(Month, day, year)

Complainant's Signature: _____

Lynn A. Cohen
Lynn A. Cohen
President-Malibu Condo Assn

If an attorney will represent you, please give the attorney's name, address, telephone number, and e-mail address.

When you finish filling out this complaint form, you need to file the original with the Commission's Chief Clerk. When filing the original complaint, be sure to include one copy of the original complaint for each utility company complained about (referred to as respondents).

VERIFICATION

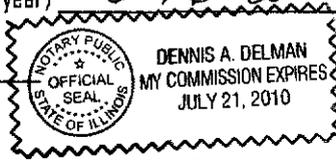
A notary public must witness the completion of this part of the form.

I, Lynn A. Cohen, Complainant, first being duly sworn, say that I have read the above petition and know what it says. The contents of this petition are true to the best of my knowledge.

Lynn A. Cohen
Complainant's Signature

Subscribed and sworn/affirmed to before me on (month, day, year) 6-13-08

Dennis A. Delman
Signature, Notary Public, Illinois



(NOTARY SEAL)

NOTE: Failure to answer all of the questions on this form may result in this form being returned without processing.

1. After we were surprised last year to discover that ComEd was billing us on the wrong rate, we filed a claim for a refund, via letter dated 10/24/07, for all of our overpayments and also interest.
2. Then, on 11/27/07, we were again surprised to learn, via letter from Robert Jacobs % ComEd, that our claim for a refund of our overpayments, while we were being billed on the wrong rate (Rate 6) for eight years, was rejected. In that letter Robert Jacobs stated:

"ComEd cannot be sure why they (Malibu) are on that rate or migrated to that rate."

Therefore, ComEd INITIALLY REJECTED OUR CLAIM FOR A REFUND OF OUR OVERPAYMENTS, WHILE THEY BILLED US ON THE WRONG RATE, WITHOUT AN EXPLANATION AND WITHOUT A REASON.

3. Then on 01/07/08, we were again surprised when John Parise % ComEd called and said that ComEd wants to take another look at Malibu's claim for a refund, due to being billed on Rate 6 vs Rate 14, beginning on 11/22/99, because ***"it doesn't make sense for either of us to spend money if we don't have to"*** (referring to attorney fees if Malibu filed a Formal Complaint before the Illinois Commerce Commission).

4. Then on 01/23/08, we were again surprised when John Parise % ComEd called and verbally supplied a reason to justify rejecting our claim - because 'ComEd discovered an internal entry within their SIMS system that showed Malibu originated an inquiry to ComEd in September 1999' (which was, as Mr. Parise said he assumed, to ask about deregulation). Mr. Parise said (assumed) that is when Malibu (verbally) requested a change from Rate 14 to Rate 6.

Therefore, ComEd REJECTED OUR CLAIM FOR A REFUND OF OVERPAYMENTS USING A FALSE ASSUMPTION AND AN INVALID REASON - WITHOUT PROVIDING ANY PROOF AND WITHOUT SAYING THAT THERE WAS A REQUIRED WRITTEN REQUEST AND A REQUIRED SIGNED CONTRACT, before ComEd could change a customer's rate, especially from a Residential rate to a Commercial rate.

5. Mr. Parise said that the date, the name of the requesting Malibu person, the name of the ComEd person and a summary of that telephone inquiry was within that SIMS entry on September 10, 1999, a copy of which he said he possesses; however, Mr. Parise (1) refused to verbally disclose the information; and (2) he also, initially, refused to provide us with a copy of that SIMS entry; and (3) he also refused to provide us with a written reply of ComEd's newest explanation for rejecting our claim.

6. On 9/10/99, there was a telephone call from Malibu's property manager, Tony Briskovic, which was noted by ComEd that, ***"the customer requested a letter from ComEd stating that this account was not selected for the lottery"***, does not justify ComEd changing Malibu's Rate 14, that existed for 30 years, to any other rate, without a written request and a signed contract.

7. When a customer requests a rate change, ComEd's Customer Service Department generates a Customer Ticket to the ComEd Account Manager in the Business Customer Service Team (B.C.S.T.), so that further communication could be made to the customer, so that ComEd could proceed in their required manner according to precedent and policy to obtain a written request and also a signed contract. But that didn't happen!

8. ComEd violated the 83 Illinois Administrative Code Sections 410.150 and 410.350 by not providing a proper response and by not providing and also obtaining the necessary information before changing Malibu's rate.

ComEd's Customer Service Department employees are not qualified, are not capable, are not allowed and should not provide any information about any non-residential or Commercial Rate.

ComEd's Customer Service Department is suppose to and usually disavows any knowledge about a non-residential rate, and are suppose to and usually do refer customer inquiries about commercial rates (eg Rate 6) to their separate Commercial/Sales/Marketing Department (Account Manager and/or B.C.S.T.). But that didn't happen!

- 9.
- a. ComEd requires a verbal request for a rate change from a customer, to be followed in writing, before being implemented;
 - b. A written request for a rate change would have had to have been provided by Malibu, before being implemented;
 - c. A written request for a rate change, from Malibu, was required to have been received by ComEd, before being implemented;
 - d. A written request for a rate change required ComEd to propose a "Rate 6 Electric Service Contract", before being implemented;
 - e. A "Rate 6 Electric Service Contract" was required by ComEd to have been signed and returned by an officer of the Malibu Condominium Association, before being implemented;
 - f. A "Rate 6 Electric Service Contract" was required to have been accepted and signed by ComEd, with a fully executed copy returned to Malibu, with a copy retained in ComEd's archives and customer file -- before being implemented (especially a change in rate from the lowest possible legitimate cost for electricity on Rate 14 for 30 years from 1969 to 1999 to the highest cost for electricity on Rate 6 beginning on 11/22/99).

10. This same non-compliance by ComEd, of not following procedure, policy and precedent, happened again on 11/22/02 when ComEd changed Malibu's rate from Rate 6 to Rate 6T.

11. Within ComEd's own Terms & Conditions, (7TH Revised Sheet No. 56.10 4/15/96), it states:

"..... the customer should make written application to the Company to be transferred to such rate or rate combination."

But, ComEd cannot produce, because they never received, a written request from Malibu for a rate change.

12. Surely Commonwealth Edison Company knows that it is not enough to deny our claim by simply saying that:

- a. ComEd cannot be sure why Malibu was put onto Rate 6;
- b. Malibu qualified to be on Rate 6; (a residential customer doesn't qualify to be on a commercial rate)
- c. ComEd found an entry in their SIMS. (an entry that has nothing to do with a requested rate change)

13. It is certainly not enough, without proof, for Commonwealth Edison Company to realize that they had no explanation for denying Malibu's claim and then follow-up by saying that Malibu called ComEd, implying that there was a verbal request to be put onto Rate 6.

BUT

When our Malibu discovered ComEd's egregious mistake:

- a. We wrote a letter which explained the details;
- b. We cited the violations;
- c. We provided the calculations of the difference between the incorrect charges and the correct charges during every month, with a 16-page spreadsheet; and then
- d. We documented those overcharges by providing a copy of each month's electric bill.

14. However, ComEd dismissed our overwhelming and conclusive evidence and then denied our claim without a valid reason and without providing proof, in their effort to keep more than 1/3rd of a million dollars of our money.

A fabricated, invalid, unproven and verbal-only reason to deny our claim does not relieve Commonwealth Edison Company from returning our overpayments, incurred during an eight year period, with interest, (as dictated by multiple Illinois Commerce Commission Public Utility Acts), that they took from us under false pretenses and income that they did not earn.

15. ComEd must provide proof of their viable defense before it will be acceptable to us or to anyone else including a tribunal. As stated by an Illinois Commerce Commission Administrative Law Judge, (Malibu) cannot and has no obligation to disprove ComEd's defense until ComEd first proves it. Also, ComEd cannot erroneously assume that they have no burden of proof regarding their affirmative defense.

16. ComEd must provide proof of Malibu's alleged verbal and/or written request for a rate change from residential Rate 14 to commercial Rate 6, that began on 11/22/99.

17. ComEd must provide Malibu with a copy of the Rate 6 Electric Service Contract that should've been signed by ComEd and also that should've been signed by Malibu, which ComEd requires, when a change in rate is requested, especially from a residential rate to a commercial rate, just before or just after it was implemented on 11/22/99.

18. ComEd must provide Malibu with a copy of the Rate 6T Electric Service Contract that should've been signed by ComEd and also that should've been signed by Malibu, which ComEd requires, just before or just after a customer qualifies to be placed onto Rate 6T.

19. ComEd must provide Malibu with the required written document(s), which authorizes ComEd to accept Tony Briskovic as Malibu's "Designated Agent" and/or consultant.

20. ComEd must provide Malibu with any other required written document(s) which verifies that ComEd was allowed to discuss and answer questions from Tony Briskovic about Malibu's electric account and take any requests and/or directions from Tony Briskovic.

21. There is no SIMS entry for Malibu, either immediately before, on, or immediately after the date of 9/10/99 or 11/22/99 that shows any reference to a request for a change in Malibu's rate.
22. ComEd must provide Malibu with their records that shows that anyone, authorized or not, ever requested a rate change.
23. If Malibu was required to request a rate change (see letter dated 11/27/07); then, ComEd's assumption, based upon ComEd's deductive reasoning, just because ComEd changed the rate, is not proof that Malibu ever actually requested a rate change. But, ComEd's assumption, based upon deductive reasoning, is an obligation for ComEd's burden of proof to provide the necessary records that Malibu ever actually requested a rate change.
24. By ComEd saying "*that rate selection is done by the customer*" does not constitute proof that our Malibu ever actually did request a rate change, even if ComEd actually did change the rate.
25. Citing Malibu's inquiry on 09/10/99 about a "*lottery*" is irrelevant to ComEd's unilateral change of Malibu's rate 2½ months later on 11/22/99 from residential to commercial.
26. What is it about Commonwealth Edison Company's logic that leads them to "*examine*" their records and then conclude without a reason and without proof that Malibu ever requested a rate change, especially without actually stating their conclusion in writing?
27. Although it was said verbally during different telephone conversations, ComEd never stated in writing that Malibu ever actually verbally requested a rate change nor did they state in writing that Malibu ever actually requested a rate change in writing.
28. ComEd's own internal SIMS document, provided to Malibu on 01/31/08, proves that ComEd made a mistake when they inadvertently changed the billing rate for Malibu after 30 years of being on a Residential Rate 14 to the Commercial Rate 6, beginning on 11/22/99; because the entry dated 09/10/99, which was cited and highlighted by John Parise % ComEd, only shows the following Comment, "***The cust requested a letter from ComEd stating that this account was not selected for the lottery. Clerk will fax to 312-960-1292.***"

There was no comment about a discussion nor an inquiry about a change in rate.

But, even if there was an entry showing that there was a verbal discussion about a change in rate, there is no entry anywhere within SIMS that Malibu even verbally requested a change of rate.

But, even if there was an entry showing that there was a verbal request for a change in rate, there is no entry anywhere within SIMS that ComEd told Malibu that is was required to provide that request in writing.

But, even if there was the requested requirement from ComEd that Malibu must first provide their requested change of rate in writing, there is no entry anywhere within SIMS that Malibu ever said that they would provide that written request.

But, even if there was an entry showing that Malibu agreed to provide that written request for a change of rate, there is no entry anywhere within SIMS that Malibu ever provided that written request for a change of rate.

But, even if there was an entry showing that Malibu did provide that written request for a change of rate, there is no entry anywhere within SIMS that ComEd ever obtained a signed Rate 6 Electric Service Contract.

29. How much more compelling evidence does anyone need to prove that Malibu never discussed, never requested and never contracted for a change of rate from Rate 14 to Rate 6? How much more compelling evidence does anyone need to prove that ComEd never received a verbal request nor a written request from Malibu and that ComEd made a mistake when they acted on their own and changed Malibu's rate resulting in overcharges and then resulting in overpayments from 11/22/99 until today?

30. Within each of their written correspondence, (letter dated 11/27/07 and e-mail dated 01/31/08), ComEd proved that they made a mistake and began overcharging Malibu for electricity when they changed Malibu's rate on 11/22/99 from Residential to Commercial by stating that it was Malibu's responsibility to request a rate change and then not be able to provide the evidence that Malibu ever requested a rate change.

31. ComEd has now twice implied that Malibu requested the rate change because "**ComEd would not move a customer from a residential rate to a commercial rate without the customer requesting the change.**" But, ComEd has not and cannot provide any evidence that proves that Malibu ever requested a rate change either verbally or in writing. ComEd simply made a mistake on 11/22/99 when they acted on their own and changed our rate.

32. In every published document that is available, or that should be available to the public, ComEd includes the required provision that a customer must elect "**in writing**" to a change of rate from one qualified rate to another qualified rate. It is ComEd's policy and an I.C.C. direction that they are not allowed to change a customer's rate unless that customer requests such a change "**in writing**". In many documents, ComEd's reference to their requirement is stated as follows:

- a. **".....upon written application by the customer to the Company."** (see the Rate 6 Tariff)
- b. **".....such customer may elect, in written application to the Company, to be served on General Service - Non-Time of Day."** (see the Rate 6 Tariff)
- c. **"Any customer may elect Time of Day service by written application to the Company."** (see the Rate 6 Tariff)
- d. **"Customers,, served hereunder may, upon written request, elect to have the rates for such service"** (see the Rate 6 Tariff)
- e. **"The customer shall have the right to terminate his contract and discontinue service from the Company at anytime on 30 days' written notice to the Company"** (see the Rate 6 Tariff)
- f. **"However, you may elect in writing to be billed under the provisions of Rate 6 - Non-Time of Day or Rate 6 - Time of Day."** (see the Principal Non-Residential Rates)
- g. **"However, if you feel that time of day billing would be advantageous, you may elect in writing to be billed under the provisions of Rate 6 Time of Day."** (see the Principal Non-Residential Rates)
- h. **".....you may request in writing that your account be transferred to Rate 6 - Non-Time of Day."** (see the Principal Non-Residential Rates)
- i. **".....you may request in writing that your account be transferred to the appropriate Rate 6 category listed above."** (see the Principal Non-Residential Rates)
- j. **"However, you may request in writing that your account be transferred to the appropriate rate listed above."** (see the Principal Non-Residential Rates)

- k. ***"When a customer provides such a request to the Company in writing, the following action should be taken:***
1. ***"A service estimate should be written"***
 2. ***"Engineering should develop a new 'standard'"***
 3. ***"Engineering should determine what the customer's new rental pattern is, if any."***
 4. ***"If the customer's 'standard' is reduced,"***
 5. ***"If requested, Engineering should provide the cost to changeout any of the customer's required facilities in an effort to reduce or eliminate rentals."***
 6. ***"The Sales Department should present all of the new above information to the customer in the form of an electric service contract (including riders 6 and 7 contract forms consistent with the new 'standard'), associated customer work agreement, and explanatory letter as required."***
 7. ***"Once the customer has signed the new electric service agreement setting forth his rate classification, the customer will be provided service accordingly starting on the next regular billing date."***
- (see the ComEd Memo dated April 6, 1992 to Division Engineers and to Division Rate Coordinators and to G.O. Sales Services)

From Malibu's vantage point, ComEd violated their own internal directives and policies, at least twice, once on 11/22/99 and then again three years later on 11/22/02, because:

- a. Malibu never ***"provided such a request to the Company in writing"*** or verbally;
- b. Malibu was never presented ***"an electric service contract"*** by ComEd's Sales Department or any other department;
- c. Malibu never ***"signed the new electric service agreement setting forth his rate classification"***.

33. If such a specific ***"written"*** request, was required by ComEd from their customers, to be changed from within the same rate classification, certainly at least the same specific ***"written"*** request would have been required by ComEd from Malibu to be changed from outside another rate classification, (from one rate classification to another), such as from a Residential Rate 14 to a Commercial Rate 6. But, that didn't happen. Commonwealth Edison Company has no written request, of any kind from Malibu, ever requesting a change from Rate 14 to Rate 6. Therefore, Commonwealth Edison Company made an internal, conscious or unconscious, intentional or unintentional, mistake when they changed our Malibu's rate from the Residential Rate 14 to a Commercial Rate 6, on 11/22/99.

34. Similarly, the same mistake/violation was made again on 11/22/02 when ComEd changed Malibu from Rate 6 to Rate 6T, without a signed Rate 6T Electric Service Contract.

35. In addition, ComEd's long-time (three to four decades) policy and precedent was to originate, propose, submit and require an Electric Service Contract to be accepted and signed by every new customer and also to be signed by every existing customer who chose/elected or automatically qualified to be changed from one rate to another.

36. The mere fact that ComEd changed Malibu's rate on 11/22/99 does not prove that Malibu made such a disadvantageous choice, (43.6% higher), either verbally or in writing; but, in the absence of Malibu's written request and/or signed Rate 6 Electric Service Contract, it does mean that ComEd made a mistake.

37. Not only did ComEd violate their own requirements when they failed to secure a written request and the proper signed Rate 6 and Rate 6T Electric Service Contract in accordance with a ComEd memo, ComEd unilaterally forced Malibu to cross-over rate classifications, from Residential to Commercial. Without any energy changes, either a customer is a Residential customer or a Commercial customer. By all definitions, our Malibu Condominium Association was designated as a Residential customer for 30 years, from 1969 to 11/22/99. ComEd's definition and billing a Residential Rate 14 Space Heating customer (for 30 years) was: **"Bundled electric service for residential customers that use electricity as the only energy source for space heating."**

38. ComEd not only failed once on 11/22/99 when they made a mistake by changing Malibu's rate from Rate 14 to Rate 6, they did it again on 11/22/02 when they reclassified Malibu's rate from Rate 6 to Rate 6T, without having requested nor securing an Electric Service Contract, either time; especially knowing that Rate 6T requires in excess of 500 Kilowatts of demand and that the 30 year Rate 14 assigned to Malibu does not bill for demands.

39. ComEd is wrong in their statement within the letter by Robert L. Jacobs dated 11/27/07, which says: **"..... I have examined our records and have determined that the association is clearly on a rate they qualify for"**; because, Malibu did not ever qualify for a commercial rate, since, as in ComEd's terms, Rate 6 is only available to **"non-residential customers"**; and ComEd also states that: **".... this rate (Rate 6) is applicable to any commercial, industrial, or governmental customer"**. Therefore, Residential Rate 14 customers do not qualify for a Commercial Rate 6.

40. ComEd would not have allowed an existing Residential customer, who was on Rate 1 or on Rate 14, to elect, choose, or convert to any Commercial rate, since they did not qualify for that other classification of rate. ComEd's own definitions were:
(see definitions of: Residential and Small Commercial Electric Customers")

a. **"AVAILABLE TO RESIDENTIAL CUSTOMERS"**

"Rate 14 – Residential Service – Space Heating Customers: Bundled electric service for residential customers that use electricity as the only energy source for space heating."

b. **"AVAILABLE TO SMALL COMMERCIAL CUSTOMERS"**

"Rate 6 – General Service – Basic "bundled" electric service for small non residential customers."

41. Malibu Condominium Association was never a **"non-residential customer"**. ComEd promoted, acknowledged, established and began billing Malibu on a residential rate, (not a non-residential rate), for 30 years, since 1969, while **"using electricity as the only energy source for space heating"**.

42. Malibu and over 900 other "all-electric" multi-family buildings were on the same rate classification as every ~100,000 individual apartments and/or condominiums in ComEd's service territory, who were heated with only electricity and were being billed on ComEd's Residential Rate 14, (at least until 01/02/07), who did not qualify for and who could not have chosen to be converted to ComEd's Commercial Rate 6. A Commercial "Rate 6" is applicable to **"non-residential customers"**.

43. Within ComEd's own Rate 6 Tariff, the very first sentence states:

APPLICABILITY

"Except as provided in Rate 6L, this rate is applicable to any commercial, industrial, or governmental customer with a Maximum Demand of less than 1,000 kilowatts who uses the Company's electric service hereunder for all requirements."

But, Malibu was never a commercial, industrial nor a governmental customer! In accordance with ComEd's definition and in accordance with ComEd's admission, designation and 360 continuous billing months for 30 years since 1969, the Malibu Condominium Association at 6007 N. Sheridan Road in Chicago, Illinois 60660 **was always only a "Residential Customer"**, as ComEd established.

44. Our Malibu Condominium Association is a not-for-profit Illinois corporation and is an "all-electric" 357 unit 39 story multi-family condominium building which was completed in 1969 with every unit and all of the public/common areas heated with only electricity.

Our building was originally designed and built to be a condominium and it was developed by Dunbar Builders, who not only pioneered the concept and marketing of condominiums in the Chicagoland area, but also pioneered the concept and marketing of individual electric heating, air-conditioning and cooking in every apartment along with electric heating in the public/common areas.

45. The installation of those "all-electric" concepts, within multi-family residential buildings which were built since the 1960's, utilized significant additional amounts of Commonwealth Edison Company's electric generating capacity that would have remained idle during the 8 "non-summer" months every year, (originally referred to as "fill the valley"); and in-turn, received Commonwealth Edison Company's residential electric space heating Rate 14 on the individual billings for all of the electricity used within each of the apartments and also on the billings for all of the electricity used within the public/common areas. Similar to over 900 other "all-electric" multi-family residential buildings within ComEd's service territory, our Malibu Condominium Association also received ComEd's Rate 14 - Residential Electric Space Heating - for over 30 years, from 1969 until 11/22/99, for all of the electricity consumed within each of the apartments and also for all of the electricity consumed within the public/common areas.

46. But, we discovered that our electric billings have been on the wrong rate ever since November 22, 1999. That was a violation of the Rate 14 Tariff.

Because, on November 22, 1999, Commonwealth Edison Company inadvertently changed our electric billing rate for the public/common areas from the correct Residential Electric Space Heating Rate #14A to their Commercial Rate 6 - General Service Non Time Of Day, which significantly increased our cost for electricity. That was a violation of the Rate 6 Tariff.

47. During the first 12 months of ComEd's egregious mistake, (from 11/22/99 thru 11/22/00), after mistakenly changing our billing rate from Rate 14A to Rate 6, without a reason, ComEd made a second mistake, by not billing us for KWs of Demand. That second mistake actually reduced our cost for electricity while we were being incorrectly billed on Rate 6 verses what we should have been billed for, if we even should have been billed on Rate 6. This happened because ComEd kept our five WHR ONLY meters in place, meters that were used while billing us for 30 years on Rate 14A, (because Rate 14 didn't require the recording nor the billing of KWs of Demand). This was a violation of the Rate 6 Tariff.

48. However, beginning on 11/22/00 and continuing for almost twelve months thru 11/13/01, ComEd tried to correct their second mistake (of not billing us for KWs of Demands), by billing us instead with "In Lieu of Demand" charges, while they continued to retain our WHR ONLY meters. This was another violation of the Rate 6 Tariff;

because

"In Lieu of Demand" charges are only permitted by the Rate 6 Tariff when a customer's usage is under 2,000 KWHrs per month; but, our usage was between 113,152 and 539,958 KWHrs every month during that period, for which ComEd then over-billed us substantially more per Kilowatt-Hour (with the same Load Factor) than they billed any other customer who was on either Rate 14 or on Rate 6.

49. On 11/13/01, ComEd finally exchanged their five WHR ONLY meters with five CUMULATIVE Demand meters and began billing us with only a single mistake, on Rate 6 with KWs of Demands, (not on Rate 6 without KWs of Demands nor on Rate 6 with "In Lieu of Demands").

50. Then, on 11/22/02, ComEd changed our rate again to Rate 6T—General Service Time Of Day, which increased our cost for electricity even more.

51. There were six times in 36 months that ComEd's actions resulted in wrong billings and violations, which then continued indefinitely.

- 1) On 11/22/99, when ComEd changed us to Rate 6
- 2) On 11/22/99, when ComEd billed us on Rate 6 without demand charges
- 3) On 11/22/00, when ComEd billed us on Rate 6 with "In Lieu of Demand" charges
- 4) On 11/13/01, when ComEd exchanged their meters
- 5) On 11/13/01, when ComEd started billing us on Rate 6 with demand charges
- 6) On 11/22/02, when ComEd started billing us on Rate 6T

52. The difference between our cost for electricity on ComEd's incorrectly billed Rate 6 (and then on Rate 6T) vs. the correct Rate 14A during the 85+ months from 11/22/99 until 01/02/07 was: \$288,331.05 including Taxes and Interest.

The Interest only for the past 18 months from 01/02/07 thru 06/30/08 on that \$288,331.05 = \$25,949.88 at \$1,441.66/month up until 06/30/08 with additional Interest = \$1,571.40/month thereafter on the total of \$314,280.93.

53. We are attaching our 16-page spreadsheet showing our entry of ComEd's billing data and the calculations of the cost difference between ComEd's incorrect charges actually paid on Rate 6/Rate 6T vs. the correct charges on Rate 14A. We're also attaching a copy of ComEd's electric bills as far back as 11/26/91, which shows the correct billings on Rate 14A/16A before 11/22/99 and then the incorrect billings on Rate 6/Rate 6T after 11/22/99.

54. We were properly and legally billed on Rate 14 for 30 years from 1969 until 11/22/99; Then, without reason, on 11/22/99, Commonwealth Edison Company inadvertently changed us to billings on their Rate 6 Commercial Service charges for electricity during the next 85½ months until 01/02/07.

However, for those 85½ months, beginning on 11/22/99, Commonwealth Edison Company extracted illegal erroneous charges from our Malibu Condominium Association in direct violation of the mandates of the Illinois Commerce Commission.

55. All decisions at the Malibu Condominium Association, such as an important decision to change our 30 year low electric Rate 14 to a higher Rate 6, (which resulted in a 43.6% higher cost), would have had to have been discussed and approved and recorded at our monthly Board Of Directors' meetings. Malibu keeps very good records and minutes of meetings; but there are no records pertaining to such a rate change request. Also, many of our Board members have served for many years and still reside at the Malibu; but none recall such a discussion, either within a verbal or a written request to ComEd in 1999 or any other year. Malibu's Board members were asked if they have any recollection of a discussion or a request for a rate change and they all agreed that they have never discussed nor voted on any rate change request, which is why Robert L. Jacobs % ComEd stated that **"ComEd cannot be sure why they (Malibu) are on that rate (Rate 6) or migrated to that rate (Rate 6)."**

56. Malibu is entitled to relief for the difference in charges/overpayments on Rate 6 vs. Rate 14 that were unlawfully imposed by ComEd, as alleged herein, in accordance with Article I, Section 12 of the Illinois Constitution, which provides that:

"Every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law, freely, completely, and promptly".

Also, within the I.C.C. P.U.A. Article IX, Rates, Sec. 9-101 it states:

"Every unjust or unreasonable charge made, demanded or received for such product or commodity or service is hereby prohibited and declared unlawful."

57. Without a call for punishment, we are only asking for ComEd to return the money they took from us since 11/22/99.

58. Why is ComEd discriminating against us, (in violation of the I.C.C. P.U.A. Article IX, Rates, Sec. 9-252 and Sec. 9-240), and why are they fighting to keep their unearned revenues, their "windfall profits", which were needlessly paid monthly by our residents (many of whom are senior citizens) since 11/22/99?

59. No customer would choose to pay 43.6% more for their electricity and then knowingly continue to pay 43.6% more for electricity for the eight years and then request a refund from ComEd for their overpayments.

60. After rendering electric bills to us on Rate 14 for over 30 years, from 1969 thru November 22, 1999, ComEd violated their own Rate 14 Tariff by removing us from those billing charges. ComEd also violated their own Rate 6/Rate 6T Tariff by imposing Commercial KWHr charges with KW Demand charges onto us, a qualified Rate 14 electrically heated residential customer.

61. Although ComEd's mistakes resulted in them charging us "for the incorrect class of service", the remedy is stated within the "83 ILLINOIS ADMINISTRATIVE CODE PART 280 - Chapter I, Section 280.75, "REFUNDS", Subchapter b, which states:

"In the event that a customer pays a bill as submitted by a public utility and the billing is later found to be incorrect due to an error either in charging more than the published rate, in measuring the quantity or volume of service provided, or in charging for the incorrect class of service, the utility shall refund the overcharge with interest from the date of overpayment by the customer."

62. ComEd also violated the Illinois Commerce Commission Public Utilities Act Article IX Sec. 9-101 & Sec. 9-240 & 9-241 "Rates", which states, respectively:

"All rates or other charges made, demanded or received by any product or commodity furnished or to be furnished or for any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge made, demanded or received for such product or commodity or service is hereby prohibited and declared unlawful. All rules and regulations made by a public utility affecting or pertaining to its charges to the public shall be just and reasonable."

and

"No public utility shall, as to rates or other charges, services, facilities or in other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates or other charges, services, facilities, or in any other respect, either as between localities or as between classes of service."

and

"Except as in this Act otherwise provided, no public utility shall charge, demand, collect or receive a greater or less or different compensation for any product, or commodity furnished or to be furnished, or for any service rendered or to be rendered, than the rates or other charges applicable to such product or commodity or service as specified in its schedules on file and in effect at the time, except as provided in Section 9-104, nor shall any such public utility refund or remit, directly or indirectly, in any matter or by any device, any portion of the rates or other charges so specified, nor extend to any corporation or person any form of contract or agreement or any rule or regulation or any facility or privilege except such as are regularly and uniformly extended to all corporations and persons."

63. The I.C.C. Public Utilities Act says that **every unjust or unreasonable charge is prohibited and unlawful**. And the 83 Illinois Administrative Code says that incorrect bills that are due to an error by a public utility in **charging for the incorrect class of service**, (e.g., Rate 6 vs. Rate 14A), shall be refunded with interest from the date of overpayment; which, in our case began on 11/22/99 and still continues.

64. Beginning on 11/22/99, Commonwealth Edison Company began charging us an **"excessive and unjustly discriminatory amount"** for our electricity. Because of that, the unnecessarily higher building operating expense for electricity, which required unnecessarily higher condominium association dues from each of our residents, probably resulted in a lower market value of those condominiums that were sold within our building since 2000, when compared to the average cost for electricity within all other condominium buildings, since many buyers consider there to be a correlation between monthly association dues and purchase price.

65. In addition and in accordance with "220 ILCS 5/16-103.1 new" - "Sec. 16-103.1. Tariffed service to Unit Owners' Associations", we should have been on ComEd's "Residential - Blended Space Heat Multiple" rate, beginning on January 2nd, 2007, but we were not and we are not.

66. Also, in accordance with ComEd's "RIDER CABA" - "COMMON AREA BILLING ADJUSTMENT", we should have been given a credit for ComEd's overcharges beginning on January 2nd, 2007 until present. We hereby request a refund.

This credit is shown on other ComEd electric billings as: "**Common Area - Special Credit**". Therefore, based upon this type of credit that was given to other "all-electric" public/common area customers, we project our additional credit/refund to be: \$89,001.41 for the 12 months of 2007 and also thru the 6 months of 2008. $(1,695,265 \text{ KWHrs} \times \$0.035/\text{KWHr} = \$59,334.27 \times 1.5 = \$89,001.41)$

67. In summary, ComEd's over-billings to the Malibu Condominium Association, that Malibu already paid on the "**wrong tariff**", adds up to **\$403,282.34**, $(\$288,331.05 + \$25,949.88 + \$89,001.41 = \$403,282.34)$ including allowed Interest thru 06/30/08, (with Interest accruing at the rate of \$2,016.41+ per month starting with July 1st, 2008 on the \$403,282.34). Therefore, we ask that you not allow ComEd to continue to keep our money.

+++++

68. The following is a chronological summary of the illogical and disgraceful responses from ComEd in their refusal to refund our money and also their refusal to cooperate by providing our requested information. A copy of each of the ten documents are attached to this "Formal Complaint".

11/27/07 Letter to Malibu from Robert L. Jacobs % ComEd rejecting Malibu's claim for a refund of overpayments, while stating:

1. ***"I have examined our records and have determined that the association is clearly on a rate they qualify for"***.

Malibu did not qualify to be switched from a residential Rate 14 to a commercial Rate 6, especially without a verbal and/or a written request.

2. ***"ComEd cannot be sure why they are on that rate or migrated to that rate"***.

While admitting they don't know the reason, ComEd rejected our claim.

3. ***"It clearly states in ComEd's Terms and Conditions that rate selection is done by the customer,"***.

A rate selection is done by the customer, for which Malibu did not request; BUT, the actual change of a customer's rate is done by ComEd, for which they had no request and no authority to do so.

11/31/08 9:40 A.M. E-mail to Malibu from John Parise % ComEd, which said:

"Mr. Shifrin: As a follow-up to our conversation, attached is a document showing all customer contacts on the Malibu ComEd account. As you can see by the attached document, a representative from Malibu Condo's contacted ComEd on September 10, 1999 to request a letter regarding their not being selected for the Lottery. It is important to not that ComEd would not move a customer from a residential rate to a commercial rate without the customer requesting the change."

But, our Malibu DID NOT request the change nor is there any note within ComEd's attached SIMS document that we did. We would bet that other telephone call general inquiries from other customers, (such as for bill inquiries or for late payment charges or regarding the Lottery), did not result in an automatic not-requested rate change.

11/31/08 9:40 A.M. ComEd's SIMS attached sheet(s) to John Parise's e-mail, showing that for Malibu's account #13101-69004, on 9/10/99 at 8:53 A.M., **Tony Briskovic**, Malibu's Property Manager, (who was not a resident nor a Board member at Malibu), called and **"requested a letter from ComEd stating that this account was not selected for the lottery"**.

- There was no inquiry from anyone at Malibu, before or after 9/10/99, about a different rate, let alone a request to have Malibu's rate changed from the lowest rate that ComEd could provide any residential customer to a higher commercial rate.

02/06/08 9:01 A.M. E-mail sent to John Parise % ComEd from Malibu, with 2-pages attached, asking:

"John:

Please respond to each of Malibu's requests for explanations and/or copies of documents as shown on the "attached" 2-pages."

02/06/08 9:01 A.M. We attached the following 2-pages to the e-mail sent to John Parise % ComEd on 02/06/08, which said:

02/06/08

Attachment to e-mail:

To: Mr. John Parise – Senior Administrator
Regulatory Strategies and Services
ComEd/Exelon
Ofc: 1 (312) 394-3866
Fax: 1 (312) 394-8693
john.parise@exeloncorp.com

From: Malibu Condominium Association

Dear Mr. Parise:

Within Robert L. Jacobs' letter to Malibu, dated 11/27/07, he stated:

"I have examined our records and have determined that the association is clearly on a rate they qualify for."

and he also stated:

"It clearly states in ComEd's Terms and Conditions that rate selection is done by the customer."

Also,

Within your e-mail, dated 01/31/08, you stated:

"As you can see by the attached document, (customer contacts within SIMS), a representative from Malibu Condo's contacted ComEd on September 10, 1999 to request a letter regarding their not being selected for the Lottery."

and you also stated:

"It is important to note that ComEd would not move a customer from a residential rate to a commercial rate without the customer requesting the change."

Because you said on 01/07/08 that "there is no sense for both of us spending money" (referring to attorney fees) upon filing a Formal Complaint before the Illinois Commerce Commission, we are asking you to support ComEd's reasoning, validity and affirmative defense for rejection of Malibu's claim for a refund of overpayments, which now has accumulated to be **\$366,789.99** (\$288,331.04+\$17,299.86+ \$59,334.27+\$1,824.82=\$366,789.99) including allowed interest thru 01/31/08, by providing Marshall Shifrin with the following information:

1. An explanation of why ComEd thinks that Malibu qualified to be reclassified from a Residential (Rate 14) to a Commercial (Rate 6), in November 1999, considering that ComEd states that Rate 6: **"is applicable to any commercial, industrial, or governmental customer"** and Malibu was always a **"residential customer"**.

And considering that ComEd also states that Rate 6 is only applicable to **"non-residential customers"** and Malibu was never a **"non-residential customer"**. Malibu was always known, approved by and billed by ComEd as a **"residential customer"** for 30 years.

2. A copy of ComEd's publicly known directive within ComEd's TERMS AND CONDITIONS that says: **"that rate selection is done by the customer"**, indicating wherein it states that: **"the customer can make written application for a rate change subject to the customer's existing contract provision."**
3. A copy of ComEd's SUPPLEMENTAL STATEMENT ELECTRICITY ILL. C. NO. 4, indicating wherein it states that: **"If changes occur in the customer's total load or load pattern that make the customer eligible for another rate or rate combination, then the customer should make written application to the Company to be transferred to such rate or rate combination."**

There were no changes in Malibu's load pattern and Malibu was not eligible for a commercial or non-residential rate.

4. A copy of any entry notes, in 1999, within SIMS, or any other ComEd record, that shows an inquiry and a request from Malibu, specifically about a rate that was different than Malibu's then existing 30 year Residential Rate 14, considering that the document you provided us does not mention anything on 09/10/99 about a rate inquiry nor a request for a rate change, but your implication does.
5. A copy of Malibu's written request to be switched from ComEd's Residential Rate 14 to a Commercial Rate 6, considering that ComEd requires a customer's request to be in writing, since ComEd uses statements within numerous public notices such as: that a customer is **"to elect in writing"** a change in rate; and also **"When a customer provides such a request to the Company in writing, the following action should be taken:"**

6. A copy of the fully executed Rate 6 Electric Service Contract, on or about 11/22/99, signed by Malibu, as required by ComEd, before ComEd can change a customer's rate, considering that ComEd states: **"The Sales Department should present all of the above information to the customer in the form of an electric service contract" "and (an) explanatory letter"**

Also considering that ComEd states: **"Once the customer has signed the new electric service agreement setting forth his rate classification, the customer will be provided service accordingly starting on the next regular billing date."**

7. A copy of the fully executed Rate 6T Electric Service Contract, on or about 11/22/02, signed by Malibu, as required by ComEd, before ComEd can change a customer's rate.
8. A copy of ComEd's required "Designation Of General Account Agent" or any other ComEd form that was signed by an officer of the Malibu Condominium Association Board of Directors in 1999 that gave written permission to ComEd to discuss, disclose, answer questions, and accept directives from that person about ComEd's account #1310169004 in accordance with ComEd's requirements, policy, precedent and privacy act.

02/06/08 9:10 A.M. E-mail sent to Malibu from John Parise % ComEd, which said:

"Marshall: It looks as if Bob Jacobs has already responded to their questions. If you have other questions, please let me know...Thanks!"

- It is obvious that John Parise knew that Bob Jacobs DID NOT RESPOND to Malibu's above eight questions and Mr. Parise is refusing to answer Malibu's questions and provide Malibu with the requested information.

02/06/08 9:59 A.M. E-mail sent to John Parise % ComEd from Malibu, which said:

"John:

Bob Jacobs has not responded to Malibu since he sent his letter dated November 27, 2007.

You said to let you know if we have other questions.

Yes, we have the questions that are within the 2-pages "attached" to this e-mail and we would like ComEd to answer each of them and provide the requested information and respond to me, to discourage us from seeking those answers elsewhere.

Our questions were sparked from Robert Jacobs' letter dated 11/27/07 and also from your e-mail dated 01/31/08.

Please provide me with the "attached" requested information which neither you nor Bob Jacobs responded to yet.

Thank you."

02/06/08 1:27 P.M. E-mail sent to Malibu from John Parise % ComEd, saying:

"Marshall: If you have further questions, please number and place on a separate document...Thanks!"

- Mr. Parise's intentional non-response to our previously numbered requests constitutes harassment and notification that ComEd was not going to comply with our request nor justify their reason to reject our claim for a refund of our overpayments.

02/06/08 3:20 P.M. E-mail sent from Malibu to John Parise % ComEd, which said:

"John:

In response to your 2nd refusal today to answer our questions, (02/06/08 9:10 A.M. & 02/06/08 1:27 P.M.), this is the third e-mail to you today, (02/06/08 9:01 A.M. & 02/06/08 9:59 A.M. & 02/06/08 3:19 P.M.), with the attached 2-pages of eight different requests for explanations and/or documents.

Your last e-mail response said: "..... please number and place on a separate document...Thanks!"

I don't know how else we can ask you for this information since we are already complying.

Malibu's 2-page request for explanations and documents was/is "numbered" with questions from #1 to #8 and it was/is "attached" to each of my e-mails and "placed on a separate document."

Please have ComEd comply with our request and answer/respond/comply to each of our eight separate and different requests..

Thank you."

- Mr. Parise asked Malibu to list and number our questions after we had already done exactly that.

02/06/08 3:38 P.M. E-mail sent from John Parise % ComEd to Malibu, which said:

"Marshall: You have my final reply...If you want to pursue this further I suggest you go through the ICC....Thanks!"

- In ComEd's effort to deny their mistake and keep our money, they challenged us to take this further, up to the I.C.C.

But, ComEd's 30 years of electric billings on Rate 14 before 11/22/99; ComEd's electric billings on Rate 6 after 11/22/99; ComEd's Tariffs; the I.C.C.'s Public Utility Acts, etc.; ComEd's refusal to provide Malibu's verbal or written request for a rate change; ComEd's refusal to provide a signed Rate 6 and Rate 6T Electric Service Contract; and ComEd's noncompliance and disgraceful responses – all proves that their egregious mistake is true; but, they still leave us their victim after 8½ years.