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ILLINOIS COMMERCE COMMISSION

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ORIGINAL

ILLINOIS COMMERCE COMMISSION

2010 JUN -9 A 10:55

Sean Davis :
-vs- :
Commonwealth Edison Company :
: :
Complaint as to billing/charges in :
Spring Grove, Illinois. :

10-0177

CHIEF CLERK'S OFFICE

RESPONDENT'S BRIEF

Now comes the Respondent, Commonwealth Edison Company ("Respondent" or "ComEd"), by and through its attorney, Mark L. Goldstein, and files this Brief in the captioned matter.

Introduction

On March 4, 2010, Sean Davis ("Complainant") filed a Formal Complaint ("Complaint") with the Illinois Commerce Commission ("Commission") against ComEd alleging that he has been overcharged for electric service at 2008 Main Street, Spring Grove, Illinois ("Property").

Pursuant to notice, a status hearing was held in this matter on April 8, 2010 before a duly authorized Administrative Law Judge ("ALJ") of the Commission. Complainant appeared pro se and ComEd was represented by counsel. An evidentiary hearing was held on May 7, 2010. Complainant testified on his own behalf. ComEd presented three ComEd employee witnesses: William M. Mueller, Principal Rate Administrator in the Retail Rates Department; Timothy J. Leahy, Billing Manager in the Billing Department; and Thomas R. Rumsey, Jr., a Meter Mechanic Special. At the conclusion of the evidentiary hearing, the ALJ marked the record "Heard and Taken." The ALJ requested

Briefs of the parties to be filed by June 7, 2010. This Respondent's Brief is in response to the ALJ's request.

Complainant's Testimony

Complainant testified that the Property is a 2-story 106 year-old building with a bar on the first floor and a two bedroom apartment on the second floor. He is currently in the process of purchasing the Property under contract, but is responsible to pay the utilities. The bar has the following electric appliances: a cooler behind the bar; a standard refrigerator; two chest freezers; a walk-in cooler and central air conditioning. He testified that both the bar and the apartment are served by one electric meter. He testified that in order for the bar and the apartment to be separately metered, he would have to spend \$2,000.00 for an electrician to do so. He now understands that it his responsibility to provide the wiring to separately meter the bar and apartment. (Tr. 47)

Complainant testified that on January 2, 2007, ComEd exchanged his meter because he complained that his electric bills were too high. He testified that after the meter was changed, he noticed that the new meter was running slower than the old meter and that the next month after the meter was changed, his electric bill was \$135.00 lower. He contended that he is entitled to a credit of \$2,882.00 for eighteen months of overcharges prior to January 2, 2007. He testified that his current electric bill is \$75.64 and it has not been that low in 3 1/2 years. This bill was the Complainant's only exhibit.

Respondent's Testimony

Mr. Mueller, was ComEd's first witness. He testified that the Property is being served by a demand meter. He presented ComEd Exhibit 1, wherein he made a comparison of the delivery charges for residential and non-residential service for the

period of December 31, 2008 through December 31, 2009. He testified that he added up the usage in kilowatt-hours and the usage in kilowatt demand for residential service and then applied the distribution facilities charge ("DFC") and multiplied the usage by the DFC and came up with an annual charge of \$1,159.70. He then took the kw demand for the same time period and multiplied it by the DFC for non-residential service and came up with the annual charge of \$829.36. He concluded that the Complainant was better off with a demand meter at the Property because it would result in lower delivery charges. (Tr. 56-57)

Mr. Mueller provided several ComEd tariffs, Exhibits, 2-7. ComEd Exhibit 2 was a tariff which requires separate metering of commercial and residential premises. He testified that subsequent ComEd Exhibits, 3-7, outlined how to determine whether the Property usage was primarily residential. He noted that since the Property had more than 10 kw of demand, a demand meter is required. He testified that it is the customer's responsibility to advise ComEd of any change in load or upgrade in service. Based on the foregoing ComEd Exhibits, 2-7 and the Commission rules, 83 Ill. Adm. Code 410.130, Mr. Mueller concluded that the primary use of the Property is non-residential, with a demand more than 10kw. Therefore, a demand meter is required. Mr. Mueller also concluded that separate metering of the bar and apartment is required.

Mr. Leahy was ComEd's second witness. Mr. Leahy testified that he reviewed the Complainant's Property electric account and determined that the meter readings were all actual readings taken on both the exchanged and current meter, except for the last month, which was estimated. (Tr. 73-74) He testified that the readings are in line, progressive and correct.

Mr. Leahy sponsored ComEd Exhibits 8 and 9. ComEd Exhibit 8 showed the meter reading history of the Property account before and after the meter exchange. He testified that on January 2, 2007 the meter was not exchanged. This date represents the date that ComEd's new electric rates went into effect. He testified that the meter was exchanged on April 17, 2008. ComEd Exhibit 9 was the Property Account Activity Statement. He testified that the Complainant's current balance on the Property account is \$11,562.51. He noted that the Complainant's last payment was made on February 10, 2010 in the amount of \$700.00.

Mr. Rumsey was ComEd's third witness. He sponsored ComEd Exhibits 10 (a), 10 (b), (c) and (d). Based on ComEd Exhibit 10 (a), he testified that on April 17, 2009 the meter was exchanged because the tech could not test the meter in the field. He testified that the exchanged and current meters are both single-phase cumulative demand meters. ComEd Exhibit 10 (b) was the test of the exchanged demand meter on the account which was tested on May 8, 2008. That meter test showed that it tested at 100% at each load. Mr. Rumsey had in his possession the exchanged demand meter at the hearing and described how the meter test was performed. He testified that the exchanged meter tested within the Commission's standards. ComEd Exhibit 10 (c) was a copy of the meter test of the exchanged meter performed by Mr. Rumsey on April 8, 2009. His test results were within the Commission's standards. ComEd Exhibit 10 (d) was the October 12, 2007 manufacturer's test results of the current demand meter on the Property. Mr. Rumsey testified that the current meter also tested within the Commission's standards. He concluded that both the exchanged and current meter were and are recording usage accurately.

Mr. Rumsey also testified that the exchanged Property meter was tested twice and was tested in the same manner as when the meter was tested by the Meter Tech using a test port as when he tested the meter at the ComEd Meter Shop. He testified that when he tested the meter at the ComEd Meter Shop his test was more thorough than the test using the test port. The results of the tests were, however, essentially the same. Both tests showed the meter was accurate.

Mr. Rumsey testified that based on his experience a demand meter was the appropriate meter to measure electric service provided to the bar. He testified that if the bar and apartment were to be separately rewired, it was the customer's responsibility to do so. He testified that the age of the Property building has nothing to do with the age of the meter. He explained the difference between a residential and demand meter. He explained that a residential meter measures kilowatt-hours, while a demand meter measures the amount of draw of kilowatts in any half-hour period. He testified that a demand meter measures peak usage in 30-minute periods and that the metering equipment has nothing to do with the size of the building. He testified that demand meters are placed in commercial establishments because of the draw on the ComEd system.

Conclusions

The Complainant has the burden of proof to show that he has been over-billed at the Property. He has failed to provide any evidence of over-billing. His only exhibit was an estimated bill. He presented no evidence, because there is none.

On the other hand, ComEd's evidence that the Property's electric bill is correct and proper is overwhelming, well beyond a preponderance of the evidence. First, the

Complainant has benefitted from having a demand meter in place. ComEd Exhibit 1 and Mr. Mueller's testimony showed that a demand meter provides the Complainant with lower electric delivery charges than simply a Kwh meter. Thus, if this is Complainant's theory of over-billing, even this is factually incorrect.

Second, the Complainant has benefitted from the single metering of his Property. Mr. Mueller's testimony and the ComEd tariffs in support of his testimony showed that the Property should be separately metered. The bar should be billed on a commercial rate and the apartment should be billed on a residential rate. It is the Complainant's responsibility to provide the wiring to do so. The Complainant understands that it is his responsibility to wire the Property so that it can be serviced by a demand and a residential meter. It is also clear from the Complainant's testimony that he lacks the \$2,000.00 necessary to do so. Again, the Complainant has benefitted from the single metering of his Property.

Third, the evidence is also clear that the Complainant has only made sporadic payments on his electric bill and, as testified to by Mr. Leahy, together with ComEd Exhibit 9, the Complainant's current balance on the Property electric account is \$11,562.51.

Fourth, the meters that have served the Property have been tested to be accurate. Mr. Rumsey provided the meter tests for the exchanged and current demand meters at the Property. He actually performed one of the tests of the exchanged demand meter and testified that both the exchanged and current demand meters tested within the Commission's standards.

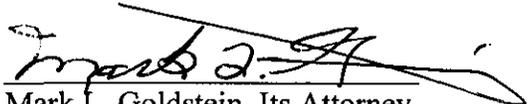
Fifth, a demand meter is the correct meter to serve the Property. Mr. Mueller provided the standards to meet the criteria for a demand meter and based on the usage, the Property is being served accurately by a demand meter. Also, Mr. Mueller testified that the predominant usage at the Property was the bar and a demand meter is the appropriate meter to measure the electric service.

In conclusion, after taking into account all of the evidence presented, the Complainant's electric service charges are proper and the complaint must be denied. This complaint was filed merely to forestall termination for non-payment of electric bills over a protracted period of time. The Complainant has not provided any evidence that the Property electric bills, whether being serviced by the exchanged or current demand meter are too high. To the contrary, the Respondent has provided evidence that a demand meter is the appropriate meter to measure electric service at the Property and the demand meters are and were recording electric service accurately. Complainant is not entitled to any credits on his electric bill. Complainant owes the Respondent \$11,562.51 for electric service to the Property. Whether on a factual or legal basis, Complainant has not sustained his burden of proof.

Wherefore, the Respondent, Commonwealth Edison Company, respectfully requests that the complaint filed by Sean Davis on March 4, 2010 be denied.

Respectfully submitted,

Commonwealth Edison Company

By: 
Mark L. Goldstein, Its Attorney

CERTIFICATE OF SERVICE

I hereby certify that on June 5, 2010, I served Respondent's Brief by causing a copy thereof to be placed in the U. S. Mail, first class postage affixed, addressed to each of the parties indicated below:

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