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BEFORE THE  
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF: )  
 )  
KAREN SMITH, )  
 )  
Complainant, )  
 )  
vs. ) No. 11-0163  
 )  
COMMONWEALTH EDISON COMPANY, )  
 )  
Respondent. )  
 )  
Complaint as to billing/charges )  
in Chicago, Illinois. )

Chicago, Illinois  
March 22, 2011

Met, pursuant to notice, at 11:00 a.m.

BEFORE:

Ms. Leslie D. Haynes, Administrative Law Judge

APPEARANCES:

MS. KAREN SMITH and MR. KENNY SMITH  
6927 South Calumet  
Chicago, IL 60637  
(312) 307-5936  
appearing pro se;

1 APPEARANCES (cont.):

2 MR. MARK L. GOLDSTEIN  
3 3019 Province Circle  
4 Mundelein, IL 60060  
5 (847) 949-1340  
6 appearing for the respondent.

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I N D E X

<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-</u> <u>direct</u>	<u>Re-</u> <u>cross</u>	<u>By</u> <u>Examiner</u>
None.					

E X H I B I T S

<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
None.		

1           JUDGE HAYNES: Pursuant to the direction of the  
2 Illinois Commerce Commission, I now call Docket  
3 11-0163. This is the complaint of Karen Smith versus  
4 Commonwealth Edison Company.

5                   May I have your name and address for  
6 the record, please.

7           MS. KAREN SMITH: Karen Smith, Chicago,  
8 Illinois, 60637, 6927 South Calumet.

9           JUDGE HAYNES: Thank you.

10           MR. GOLDSTEIN: For Commonwealth Edison  
11 Company, Mark L. Goldstein, 3019 Province Circle,  
12 Mundelein, Illinois, 60060. My telephone number is  
13 (847) 949-1340. With me today is Monica Merino of  
14 ComEd.

15           JUDGE HAYNES: Thank you.

16                   I'll note for the record that this is  
17 the first time that this complaint has come up, and  
18 today is just a status hearing. And I generally like  
19 to give parties an opportunity to talk amongst  
20 themselves in case there is some possibility that a  
21 settlement can be reached. But also just to let you  
22 know that today we're not going to have the actual

1 hearing.

2 MS. KAREN SMITH: Okay.

3 JUDGE HAYNES: Specifically because you and the  
4 company will need to exchange any documents that you  
5 might have and give the company an opportunity to  
6 look into your complaint if they haven't already.  
7 And then if you're not able to reach an agreement  
8 today, we would schedule it for a different date to  
9 have the actual hearing after you've exchanged all  
10 your information. And if you're going to bring  
11 witnesses in, then we would do that at a later date  
12 for the actual evidentiary hearing -- trial.

13 MS. KAREN SMITH: Right.

14 JUDGE HAYNES: Okay.

15 MS. KAREN SMITH: Okay.

16 JUDGE HAYNES: Mr. Goldstein, have you had an  
17 opportunity to look into this at all or...

18 MR. GOLDSTEIN: Not really, Judge. I'm  
19 starting to look at some of the information.

20 This is a combination mixed metering  
21 situation with tampering thrown in on top of it. The  
22 meter was tested. And I think, you know, what

1 Ms. Smith says in her complaint that there was a  
2 creep in the meter, I don't know to what extent there  
3 was. And we've got to see how we can correct this.

4 MR. KENNY SMITH: Can I --

5 JUDGE HAYNES: Can you identify yourself for  
6 the record.

7 MR. KENNY SMITH: My name is Kenny Smith. I am  
8 the husband of Karen Smith.

9 And I was at the referee reading that  
10 Illinois Commerce Commission conducted on the  
11 electrical meter. It was found that for over three  
12 years that it had a 20 percent forward creep.

13 According to the State's -- the  
14 Illinois Commerce Commission statutes and the codes  
15 under 400, it does not -- there is no tampering when  
16 it's to the detriment of the consumer. And I listed  
17 in the complaint -- because I wrote it up for my  
18 wife -- and went according to the codes of all the  
19 statutes and codes that had been broken. Illinois --  
20 I mean, ComEd failed to respond to us within the six-  
21 to nine-month period. It's been over three years  
22 now, and they still have not responded to us to this

1 day or the Illinois Commerce Commission regarding  
2 this issue.

3 So we wanted to just have -- and  
4 according to the State statutes, this is supposed to  
5 be closed and we be credited, you know, or just wiped  
6 out if they didn't respond within a certain period.

7 JUDGE HAYNES: So do you know what the date was  
8 of that meter test?

9 MR. KENNY SMITH: Three years ago. I don't  
10 know, but it's listed with the Illinois Commerce  
11 Commission.

12 MS. KAREN SMITH: We can find out.

13 MR. KENNY SMITH: Greg Rockrohr came from the  
14 Illinois Commerce Commission. The employee of the  
15 Illinois Commerce Commission conducted it.

16 MS. MERINO: It was March 27 --

17 MR. GOLDSTEIN: March 27, 2009.

18 MS. KAREN SMITH: Right.

19 JUDGE HAYNES: 3/27/09.

20 MR. GOLDSTEIN: Yes.

21 MR. KENNY SMITH: And to this date there hasn't  
22 been no --

1 JUDGE HAYNES: So just two years ago.

2 MR. KENNY SMITH: Two years ago.

3 JUDGE HAYNES: Okay.

4 MR. KENNY SMITH: But it was three -- we have  
5 been complaining about the forward creep.

6 JUDGE HAYNES: You thought your bills were too  
7 high for a while.

8 MS. KAREN SMITH: Yes.

9 MR. KENNY SMITH: For two years before that.

10 MS. KAREN SMITH: For two years prior to that.

11 JUDGE HAYNES: Okay. And so has your meter  
12 been changed?

13 MR. KENNY SMITH: Yeah. Everything is fine  
14 now. Everything is great.

15 MS. KAREN SMITH: Yes. Everything is fine now.

16 JUDGE HAYNES: So when did the meter get  
17 changed?

18 MR. KENNY SMITH: On that day.

19 MS. KAREN SMITH: On that day.

20 JUDGE HAYNES: Oh, on March 27th?

21 MS. KAREN SMITH: Yes.

22 MR. KENNY SMITH: Yes.

1           JUDGE HAYNES:  Oh, okay.  So do you have an  
2   idea of how much money you're talking about?

3           MR. KENNY SMITH:  20 percent.  We felt that  
4   they were -- they were supposed to calculate it.

5           JUDGE HAYNES:  Okay.

6           MR. KENNY SMITH:  And then get back to the  
7   Illinois Commerce Commission which never happened.

8           MS. KAREN SMITH:  But they never did.

9           JUDGE HAYNES:  Oh.

10          MR. KENNY SMITH:  So they're supposed to  
11   calculate -- they had all the data.  And all of the  
12   proof for us lies with the Illinois Commerce  
13   Commission with Greg Rockrohr.  He wrote up a report.  
14   And the report is available, of course, to you guys.  
15   And they were supposed to calculate exactly what the  
16   20 percent represents and a dollar amount and then  
17   get back to us and they never did.

18          JUDGE HAYNES:  Okay.

19          MS. KAREN SMITH:  And they kept the amount the  
20   same.

21          JUDGE HAYNES:  Okay.

22          MR. GOLDSTEIN:  Well, I've got a copy of

1 Mr. Rockrohr's letter to you, Mr. Smith, you know.  
2 And with respect to the meter that ends in 479, you  
3 know, this is the meter that had been tampered with.

4 MR. KENNY SMITH: The meter had been tampered  
5 with by ComEd.

6 MR. GOLDSTEIN: I certainly doubt that.

7 MR. KENNY SMITH: I don't know. We would not  
8 tamper --

9 JUDGE HAYNES: Okay. Okay.

10 MR. KENNY SMITH: Anyway --

11 MR. GOLDSTEIN: I'm not saying who tampered --

12 MR. KENNY SMITH: Anyway --

13 MR. GOLDSTEIN: I'm not saying --

14 THE REPORTER: One at a time.

15 MR. KENNY SMITH: I'm sorry.

16 But, anyway, according to the codes,  
17 if it's to our detriment, it doesn't matter. And to  
18 say that is contradictory of the State statutes.

19 JUDGE HAYNES: Okay. Let's hear Mr. Goldstein.

20 MR. GOLDSTEIN: Well, I'm not going to argue  
21 the law with you, Mr. Smith.

22 All I'm saying is that what I read

1 from Mr. Rockrohr's letter to you is that meter had  
2 been tampered with, and it doesn't say anything about  
3 a 20 percent creep. But it's obvious that the meter  
4 was not recording accurately because there had been  
5 tampering. I'm not saying who tampered with the  
6 meter. I don't know who tampered with the meter, and  
7 either does Mr. Rockrohr or anybody at ComEd. But  
8 that's the situation.

9 I don't know what you did to follow up  
10 with Mr. Rockrohr after he sent this letter to you.

11 MR. KENNY SMITH: I talked to him on the phone.  
12 He said there was a 20 percent forward creep as was  
13 stated on site when we did the inspection -- when he  
14 came out and did the inspection. There was a  
15 20 percent forward creep.

16 MS. MERINO: Here's the meter shop test.  
17 Because we have the meter in our possession.

18 MR. GOLDSTEIN: This is the 479 meter. Okay.

19 The problem I guess I have initially,  
20 Judge, and, you know, I haven't had much chance to  
21 look at some of the data, is that under heavy load  
22 conditions, full load, the meter was

1 under-registering; under light load conditions, it  
2 was over-registering. And I don't know how all that  
3 plays into what kind of adjustment could be made. I  
4 don't know what to say other than that.

5 I mean, I'm looking at Mr. Rockrohr's  
6 letter, and I'm also looking at -- there was a meter  
7 test in the shop of the meter that had been tampered  
8 with and --

9 JUDGE HAYNES: Have you seen the results of  
10 this meter test he's talking about?

11 MR. KENNY SMITH: Greg Rockrohr talked to us,  
12 and he may have sent us the paperwork.

13 MS. KAREN SMITH: He sent us -- yes.

14 MR. KENNY SMITH: He may have. I'm not sure.

15 MR. GOLDSTEIN: Did you see this, Mr. Smith?

16 MR. KENNY SMITH: In reading it, he was just  
17 interpreting it for me.

18 JUDGE HAYNES: Right.

19 MR. KENNY SMITH: But what we were complaining  
20 about even two years before that is that we were  
21 calling ComEd out and then they didn't want to come  
22 out. And then we talked to them. We had them come

1 out.

2 And the guy who came out there took  
3 the meter, went to his truck, and he did -- I don't  
4 know what he was doing to the meter in his truck.  
5 And then our bills skyrocketed after that. We  
6 reported it to them. We kept reporting it. And this  
7 went on for about a couple years or so.

8 JUDGE HAYNES: Until the meter was --

9 MR. KENNY SMITH: Until CEDA told us about the  
10 Illinois Commerce Commission. And then when CEDA  
11 told us about the Illinois Commerce Commission, then  
12 that's when we called them. And we were saying, Hey,  
13 this guy came out and he took the meter to his truck.

14 JUDGE HAYNES: A ComEd person?

15 MS. KAREN SMITH: Yes.

16 MR. KENNY SMITH: A ComEd person. And he was  
17 in the front seat doing some stuff with it. I have  
18 no idea.

19 MS. KAREN SMITH: We thought he was testing it.

20 MR. KENNY SMITH: We thought he was testing it.

21 We weren't familiar with the process. But that's  
22 what we initially reported and we had been reporting

1 for a couple years.

2 JUDGE HAYNES: So ComEd probably has a record  
3 of all your calls and service calls they might have  
4 done at your house.

5 MS. MERINO: This is going back to '09?

6 MR. KENNY SMITH: It's going back to probably  
7 '06 --

8 MS. KAREN SMITH: '06, '07.

9 MR. KENNY SMITH: -- '07 because we had --

10 MS. KAREN SMITH: We were complaining.

11 MR. KENNY SMITH: -- a lady that was a tenant  
12 there at that time, and she was driving me crazy.  
13 And so that's when her bills --

14 MS. KAREN SMITH: Her bills were like \$300 --

15 THE REPORTER: I can only take one of you  
16 speaking at a time.

17 MR. KENNY SMITH: Tell them.

18 MS. KAREN SMITH: Her bills were, like, \$300 a  
19 month and she was never at home.

20 JUDGE HAYNES: For summer?

21 MS. KAREN SMITH: And she doesn't have  
22 children.

1 JUDGE HAYNES: In the summertime?

2 MS. KAREN SMITH: Yes. All year. She was  
3 getting extremely high bills and we were getting high  
4 bills. And we didn't know what was going on. That's  
5 why she moved. She moved because she couldn't pay  
6 the ComEd bills.

7 JUDGE HAYNES: So this isn't your home account?

8 MR. KENNY SMITH: No. That's a secondary  
9 property.

10 JUDGE HAYNES: Okay. So it's a rental  
11 property?

12 MR. KENNY SMITH: Yes.

13 MS. KAREN SMITH: Yes.

14 JUDGE HAYNES: And whose name was the account  
15 in the whole time? Was it in your name the whole  
16 time?

17 MS. KAREN SMITH: Yes, yes, uh-huh.

18 JUDGE HAYNES: Okay. I think that there might  
19 be a lot to this case and you probably want to take  
20 some time to talk and exchange documents -- the meter  
21 test, the letters, account records.

22 MR. GOLDSTEIN: Do we have the test that was

1 the referee test? We have the letter from  
2 Mr. Rockrohr.

3 JUDGE HAYNES: So what you've handed Mr. Smith  
4 is the internal ComEd test, not the referee test?

5 MR. GOLDSTEIN: Yes. That was the in-house  
6 test.

7 JUDGE HAYNES: Okay. So I guess we'd also have  
8 to get the referee test.

9 MR. KENNY SMITH: Right.

10 MS. KAREN SMITH: Yes.

11 MR. GOLDSTEIN: And it's further complicated I  
12 guess by the fact that there were adjustments made to  
13 the billing.

14 JUDGE HAYNES: Okay.

15 MR. GOLDSTEIN: Now, I don't know, you know --  
16 as we're sitting here, we can't figure out whether  
17 the adjustments were appropriate, whether the billing  
18 is appropriate. It's just very confusing.

19 MS. KAREN SMITH: Well, the adjustments were  
20 made because we had gotten a new tenant, and her  
21 bills were extremely high. That's when we started  
22 calling back ComEd to come out, and they wouldn't.

1 JUDGE HAYNES: So this is before '09?

2 MS. KAREN SMITH: Yes. This is during '09 at  
3 this time.

4 MR. GOLDSTEIN: This is during -- yes.

5 MS. KAREN SMITH: And then the referee --  
6 that's when we got the referee testing, and they  
7 adjusted her bill. They never adjusted our bill.

8 JUDGE HAYNES: So it wasn't always on the  
9 same -- under your name?

10 MS. KAREN SMITH: Yes. It's under my name,  
11 Karen Smith.

12 MR. KENNY SMITH: No.

13 MS. KAREN SMITH: They adjusted the meters.  
14 They changed the meters?

15 MR. KENNY SMITH: No. What happened is that  
16 they were -- what came out also was that the first  
17 floor meter and the second floor meter ComEd had  
18 mixed up.

19 MS. KAREN SMITH: Yes.

20 MR. KENNY SMITH: So they were receiving -- the  
21 tenants were receiving the first floor billing, and  
22 the second floor -- they were inverted.

1 JUDGE HAYNES: Uh-huh.

2 MR. KENNY SMITH: And so they straightened them  
3 out.

4 JUDGE HAYNES: Uh-huh.

5 MR. KENNY SMITH: And then got everything  
6 correct so the right meter was registering with the  
7 right floor. And all of that stuff has been  
8 straightened out even to this day.

9 But the one aspect that was never  
10 addressed that should have been addressed in '09 was  
11 the forward creep. And that part was not addressed  
12 at all even though Greg Rockrohr was sending letters  
13 because we've been in communication with him. There  
14 was nothing -- ComEd did not -- refused to address  
15 the forward creeping part.

16 JUDGE HAYNES: Okay.

17 MR. KENNY SMITH: Which left -- excuse me.

18 JUDGE HAYNES: Uh-huh.

19 MR. KENNY SMITH: Which left like  
20 600-something -- about \$600 roughly that was attached  
21 to the meter, that the forward creep part was not  
22 factored into the remaining \$600 that was supposed to

1 be paid.

2 JUDGE HAYNES: Okay. I think that  
3 Mr. Goldstein is not ready to go ahead today, and I  
4 think that we should just continue it. I don't know  
5 if we need another status hearing; or if you have an  
6 opportunity to talk today and exchange documents, if  
7 we could just go ahead with the evidentiary hearing.

8 Mr. Goldstein, do you have a take  
9 on --

10 MS. MERINO: Why don't we take a minute to talk  
11 to them?

12 MR. GOLDSTEIN: Yeah. Maybe we should just  
13 talk to them for a moment and see what we can do and  
14 then make a decision as to --

15 JUDGE HAYNES: How to proceed.

16 MR. GOLDSTEIN: Yes.

17 JUDGE HAYNES: Okay. I will come back.

18 (Whereupon, a recess was taken.)

19 JUDGE HAYNES: Let's go back on the record.

20 So the parties had an opportunity to  
21 discuss things.

22 MS. KAREN SMITH: Yes.

1 MR. KENNY SMITH: Yes.

2 JUDGE HAYNES: And were you successful?

3 MS. KAREN SMITH: Yes.

4 MR. KENNY SMITH: Yes.

5 MR. GOLDSTEIN: Yes. The matter has been  
6 resolved, Judge.

7 JUDGE HAYNES: Okay. Fantastic.

8 MR. GOLDSTEIN: And there will be filed with  
9 the Chief Clerk of the Commission a stipulation to  
10 dismiss with prejudice. I'm providing you with a  
11 copy.

12 JUDGE HAYNES: Okay.

13 MR. GOLDSTEIN: I will be filing this, as I  
14 said, with the Chief Clerk.

15 JUDGE HAYNES: Okay. Then that's all that we  
16 need to do. And the matter is marked heard and  
17 taken. Thank you.

18 HEARD AND TAKEN.

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