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JUL 14 2011

Peter R. Fletcher :
-vs- : 11-0144 ILLINOIS COMMERCE COMMISSION
Commonwealth Edison Company : CHIEF CLERK'S OFFICE
Complaint as to billing/charges :
in Lisle, Illinois. :

RESPONDENT'S MOTION TO DISMISS

Now comes the Respondent, Commonwealth Edison Company ("Respondent" or "ComEd"), by and through its attorney, Mark L. Goldstein, and files Respondent's Motion to Dismiss the Formal Complaint ("Complaint") filed by the Complainant, Peter R. Fletcher ("Complainant" or "Fletcher").

Background

On February 9, 2011, Complainant filed the Complaint alleging that ComEd has improperly calculated the Capacity Charge imposed on him as a Real Time Pricing program customer and that the Capacity Charge should be based on his net usage.

On April 6, 2011, Respondent filed an Answer to the Complaint which, in part, described the methodology used to compute the Capacity Charge associated with Complainant's service under ComEd rate, BESH - Basic Electric Service Hourly Pricing "Rate BESH"). In further answer to Paragraph 5 of the Complaint, Respondent stated that ComEd's method of determination of the load for net metering customers, such as Complainant, is consistent with the PJM Behind the Meter Generation Rules, Generation Netted Against Load, Section 24(a), page 4, attached hereto as Exhibit A. Also, Respondent stated that FERC's Determination of Capacity Load Contributions and

Network Service Peak Load Contributions are listed on ATTACHMENT M-2 filed with FERC.

Basis for Motion to Dismiss ("Motion")

There are two bases for the Motion. First, the Complaint is solely subject to FERC jurisdiction and so the Illinois Commerce Commission ("Commission") lacks subject matter jurisdiction over this Complaint. Second, Rate BESH is applicable to a group of ComEd customers, of which the Complainant is only one. As such, since the Commission does not permit class actions pursuant to 83 Ill Adm. Code 200.95, this complaint must be dismissed.

As set forth on Attachments B and C, ComEd filed ATTACHMENT M-2 with the FERC. PJM requires that the revenues obtained by ComEd under Rate BESH be reported to the FERC and provided to the PJM. The methodology used by ComEd to determine Rate BESH charges to net metering customers has been provided in Respondent's Answer to Complaint and this Motion. The key to the formula is that the gross load minus the operating BtMG ("Behind the Meter Generation") is not less than zero. Pursuant to Section 24(a), the Complainant is a net consumer. The revenues received from such net metering customers are PJM revenues and if the Complainant does not make the appropriate contribution under the methodology, other customers would be required to make up his contribution. This would be contrary to the widely accepted theory that the cost causers are the ones to pay the costs. The Complainant is the cost causer. It is ComEd's position that if the Complainant wishes to contest the methodology or his contribution, he must make an appropriate filing with the FERC, which has primary jurisdiction over PJM revenues, not this Commission. On this basis,

the Complaint should be dismissed because of a lack of subject matter jurisdiction by the Commission.

Second, the Complaint should be dismissed because the Complaint seeks to have ComEd's methodology changed. The Complainant is not the entire class of net metering customers subject to the Behind-the-Meter Generation Business Rules. If the Commission desires, it could investigate the Generation Netted Against Load Rule 24(a), which permits ComEd to charge the Complainant as a net consumer. The Complaint is not an appropriate forum to conduct such an investigation and thus, the Complaint should be dismissed.

For all of the above reasons, the Respondent, Commonwealth Edison Company respectfully requests that the Formal Complaint filed by Peter R. Fletcher against Commonwealth Edison Company on February 9, 2011 be dismissed.

Respectfully submitted,
Commonwealth Edison Company

By: 
Mark L. Goldstein, Its Attorney

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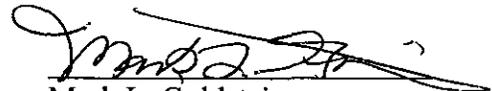
CERTIFICATE OF SERVICE

I do hereby certify that on July 11, 2011, I served the foregoing Respondent's Motion to Dismiss 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:

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

Mr. Peter R. Fletcher
6092 Angel Lane
Lisle, IL 60532

Ms. Leslie D. Haynes
Administrative Law Judge
Illinois Commerce Commission
160 N. LaSalle St., Ste. C-800
Chicago, IL 60601


Mark L. Goldstein