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STATE OF ILLINOIS
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Peter R. Fletcher :
-vs- : 11-0144
Commonwealth Edison Company :
Complaint as to billing/charges :
in Lisle, Illinois. :

CHIEF CLERK'S OFFICE

RESPONDENT'S RESTATED 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 Restated Motion to Dismiss the Formal Complaint ("Complaint") filed by the Complainant, Peter R. Fletcher ("Complainant" or "Mr. Fletcher").

Background

On February 9, 2011, Complainant filed the Complaint alleging that ComEd improperly calculated the capacity charge imposed on him as a real-time pricing customer, because, since he is also a net-metering customer, his capacity charge should be based on his net usage.

On April 6, 2011, Respondent filed an Answer to the Complaint. On July 11, 2011, Respondent filed a Motion to Dismiss the Complaint, and on July 29, 2011, Respondent filed a Motion to Withdraw its Motion to Dismiss.

Basis for Restated Motion to Dismiss

The relevant inquiry on a respondent's motion to dismiss is whether the complainant has alleged sufficient facts that, if proved, would entitle the complainant to relief. All well-pleaded facts and reasonable inferences from them must be taken as true, and the allegations must be viewed in the light most favorable to the complainant. *Village of Roselle v. Commonwealth Edison Co.*, 368 Ill. App. 3d 1097, 112 (2d Dist. 2006). In the present case, the Respondent's

Answer to the Complaint shows that there are essentially no factual disputes between the parties as to matters that could be dispositive of the issues raised in the Complaint. This Restated Motion to Dismiss is not predicated on factual errors made by the Complainant, but rather on errors made by the Complainant in interpreting the relevant Illinois law. The gravamen of the Complaint is that ComEd calculated Mr. Fletcher's bill incorrectly because the company did not adequately give him credit for solar generating facilities on the roof of his residence. ComEd did, however, give Mr. Fletcher the credit for his generating facilities that is provided for in the "net metering" provisions of the Public Utilities Act (the "Act") and, correspondingly, in its tariffs. When the Commission promulgated its "net metering" regulation under the Act, it rejected arguments that customers who own generation should receive the additional credit Mr. Fletcher is seeking.

Capacity Charges and Energy Charges

Complainant takes basic service under Rate BESH – Basic Electric Service Hourly Pricing ("Rate BESH"). Rate BESH contains a charge for capacity as well as a charge for energy. These two charges are very different in nature. Energy charges require customers to pay for the kilowatt-hours (kWh) of energy they extract from the system over time. Capacity charges require customers to pay for the kilowatts (kW) of load (*i.e.*, demand) they impose on the system at certain critical times. This load is their contribution to the maximum system demand that determines the size of the facilities that must be available to serve customers, and thereby drives the costs of the capacity required to serve them.

The Public Utilities Act

In 2007 the Act was amended by the addition of Section 16-107.5, the so-called "net metering" provisions of the Act. 220 ILCS 5/16-107.5. These provisions set forth a special

billing method for a retail customer who owns generation at his or her premises, because the Act recognizes that the customer will sometimes be exporting to the utility's system the excess energy he or she produces, while at other times the customer will be drawing energy in from the utility's system. Section 16-107.5(d) provides that the utility will charge or credit the customer as follows: (1) if the amount of electricity the customer uses in a month exceeds the amount the customer produces, the utility bills the customer for the kWh of his or her usage minus the kWh the customer has exported to the system. (2) If the kWh the customer produces exceeds the kWh the customer uses, the utility "shall apply a 1:1 kilowatt-hour credit to a subsequent bill for service for the net electricity supplied" to the utility. (3) At the end of a year or annualized period, any such unused kWh credits shall expire.

It is plain on the face of the statute that the provision for subtracting the kWh the customer exports to the system from the kWh the customer consumes speaks to the customer's energy usage (billed as an energy charge), not to the load the customer places on the system (billed as a capacity charge). Energy is measured in kilowatt-hours (kWh), which is a measure of energy used over time. By contrast, capacity is measured in kilowatts (kW), a measure of the amount of load placed on the system at a given time. By way of example, if a customer turns on a 100 watt light bulb, the bulb imposes a 100 watt (or .1 kW) load (*i.e.*, demand or capacity requirement) on the system; if the bulb burns for an hour, it extracts 100 watt-hours (or .1 kWh) of energy from the system. The Act makes no provision at all for any subtractions from the load imposed on the system by a customer with generating facilities at his or her premises.

The Commission's Order and Regulation

Section 16-107.5 of the Act required the Commission to promulgate a regulation implementing the Act's requirements for billing retail customers who have generation at their

premises, and the Commission did so in 2008. The billing provisions of the regulation again make it clear that the special billing provisions of the Act relate to energy charges and not to capacity charges:

If the customer is a net seller of electricity, the customer shall receive a monetary credit from the electricity provider that is equal to the *energy credit* determined for the billing period, plus a kilowatt-hour based delivery charges multiplied by the net energy supplied over the billing period.

83 Ill. Adm. Code 465.50(a)(2)(C) (emphasis supplied). In the proceeding before the Commission, the Attorney General and the Environmental Law and Policy Center objected to this provision, arguing that it did not constitute “true net metering,” because the credit was only available for energy the customer exports to the system (energy credit) and did not extend to reductions in the customer’s load (capacity credit).¹ The Commission rejected the argument that a customer with generation on his or her premises should not be liable for capacity charges.

Illinois Commerce Comm’n on its own Motion, Docket No. 07-0483 (2008) (Order at 8.)

Rate BESH

In its Answer to the Complaint, ComEd explained the calculation of Complainant’s capacity obligation (on which his capacity charge is based) under Rate BESH. (Answer, ¶ 5.) The description of the capacity charge calculation under Rate BESH is fairly generic, but ComEd has long followed a uniform methodology for such calculations.² This methodology is consistent with the one incorporated in the Open Access Transmission Tariff of the PJM Interconnection, the Regional Transmission Organization to which ComEd belongs. It is important that the Rate BESH calculation match the methodology of the PJM Tariff because the latter is used to allocate the total capacity obligations of the ComEd zone of PJM among both retail and wholesale

¹ These parties made the same argument with regard to charges other than the capacity charge.

² The calculation of the capacity charge under Rate BESH is set forth at Ill. C.C. No. 10, 4th Revised Sheet No. 33 and 4th Revised Sheet No. 34 (Attachment 1 to this Motion).

customers.³ In accordance with this methodology, ComEd calculated Mr. Fletcher's capacity obligation for the period June 2011 through May 2012 by taking his net load on the five PJM peak hours in 2010 and averaging them. Using five peak hours for the year, instead of only one, gives a more reliable picture of the load a customer is imposing on the system at times of maximum loading. The Complaint states that the Complainant in general understands and accepts the calculation of the capacity obligation for Rate BESH customers. (Complaint, ¶ 1.)

Rider POGNM

Complainant is a residential customer who is also served under Rider POGNM – Parallel Operation of Generation, Net Metering (“Rider POGNM”). That Rider is available to him because he has installed solar panels on his residence and he “uses the gross output of [his] electric generating facilities to provide a portion of [his] electric power and energy requirements. The remaining portion of such retail customer’s electric power and energy supply requirements is provided to such retail customer in accordance with the provisions of the otherwise applicable tariff or tariffs.” (Ill.C.C. No. 10, Original Sheet No. 296.) In Mr. Fletcher’s case, the otherwise applicable tariff is Rate BESH.

Under Rider POGNM, ComEd bills Mr. Fletcher only for the kilowatt-hours (kWh) of his net energy usage, that is, his gross monthly kWh usage less the number of kilowatt-hours he exports to the system during the month.⁴ Again, the Complaint does not allege that Mr. Fletcher’s kilowatt-hour energy charges have not been properly calculated on a net basis under Rider POGNM.

³ The methodology for calculating capacity obligations under the PJM Open Access Transmission tariff is set forth at Attachment M-2 (ComEd) of the Tariff. (Attachment 2 to Respondent’s Answer)

⁴ Mr. Fletcher receives no credit for the amount of energy he produces and consumes on site, but the gross amount of energy ComEd would otherwise have supplied is correspondingly reduced.

The Gravamen of the Complaint

As explained above, under Rate BESH the customer's capacity obligation is determined by taking the customer's load (*i.e.*, demand) during the five peak hours on the PJM system and averaging them. Mr. Fletcher imposed no load on the system during four of the five PJM peak hours in 2010. In the fifth peak hour, the gross load in Mr. Fletcher's home was 2.7180 kilowatts (kW). (Answer, ¶ 4.) ComEd did not base Mr. Fletcher's capacity obligation on this number, however, because in the same hour his generating facilities produced gross power of 0.5436 kW. (*Id.*) ComEd therefore subtracted the production from the consumption for a net load of 2.2374 kW during that peak hour. (*Id.*) But ComEd did not base Mr. Fletcher's capacity obligation on that net load either. Because he had imposed no load on the system during the other four peak hours, ComEd added zeroes for those four peak hours and divided the total of the five hours by five (thus averaging the sum), for a net capacity obligation of 0.49 kilowatts.

Mr. Fletcher's sole complaint is that because he is a Rider POGNM customer ComEd should have not only netted his energy charges under Rider POGNM but should also have netted his capacity (*i.e.*, load) charges under Rate BESH – *i.e.*, that in calculating his capacity charge, on those peak days when Mr. Fletcher was exporting to the system, ComEd should have calculated his load contribution as negative, instead of merely zero. Mr. Fletcher argues that ComEd's failure to do this is "contrary to the intent (at least) of the Net Metering Statute." (Complaint, ¶ 1.) This argument is doomed to failure because the Commission already rejected it in promulgating its regulation in 83 Ill. Adm. Code Part 465. The intent of a statute must be inferred from the statutory words, and the Commission correctly recognized that the special

billing provisions in Section 16-107.5 of the Act apply to energy charges and do not apply to capacity charges.⁵

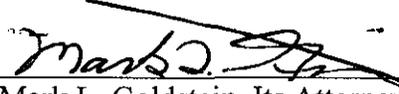
The Act's allowing net metering of energy and not of capacity is reasonable, given the very different nature of the costs that energy and capacity impose on the system. The reason for using five PJM peak hours instead of one is that it produces a more reliable measure of a customer's contribution to system peak loads and hence his responsibility for capacity costs. This is particularly true for Rate BESH customers; because they are taking hourly service, these customers have a greater ability to shape their usage patterns than other customers. Under Mr. Fletcher's desired calculation, the five-peak-hour methodology would be undercut by the elimination of real loads the customer was imposing on the system at peak hours. In the peak hour that ComEd averaged with the other four peak hours, Mr. Fletcher's residence was imposing a real net load on the system at a peak time. That was a net load that the system had to stand ready to meet at that time, and it is simply irrelevant that at some other time Mr. Fletcher was producing more than he was consuming. That, of course, is not true. By dividing this real load by five, the Rate BESH methodology fully compensated Mr. Fletcher for not imposing a load on the system during the other PJM peak hours. Similarly, if a coal or nuclear generating station interconnected to the ComEd system were shut down and imposing a station-power load on the system (*i.e.*, the power that the plant requires for its own internal loads such as lighting and air-conditioning) on one of the five PJM peak hours, that plant would be assessed a capacity charge in the same manner, despite having exported many thousands of kWh to the system in other hours.

⁵ Where a statute provides for one thing and not another, the legislature is presumed to know what it was doing. "Under the rule of *expressio unius est exclusio alterius*, when an act lists things to which it refers, the court may infer that any omissions were intended as exclusions." *In re Consensual Overhear*, 323 Ill. App. 3d 236, 240 (2d Dist. 2001).

Conclusion

The Complaint does not raise any factual issue that would warrant a hearing for its resolution. It asserts that the Public Utilities Act entitles the Complainant to an additional credit on his bill that ComEd did not provide him with. As the foregoing makes clear, however, the customer is mistaken and the law does not entitle him to this additional credit. ComEd calculated the customer's charges properly under a Commission-approved tariff, which is consistent with the Commission's "net metering" regulation and the "net metering" provisions of the Public Utilities Act. Because there is no disputed issue of fact and the Complaint merely raises an issue of law that can be decided summarily, Respondent's Restated Motion to Dismiss should be granted.

Respectfully submitted,
Commonwealth Edison Company

By: 
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CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2011, I served a copy of the attached Respondent's Restated 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 listed below:

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