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CHIEF CLERK'S OFFICE

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

**Response to Respondent's 'Restated Motion to Dismiss'**

Respondent has moved summarily to dismiss this Complaint primarily on the grounds that (in Respondent's view) a prior ruling of the Commission has specifically addressed and rejected the argument that Complainant is putting forward. In support of this view, Respondent cites the Commission's rejection of certain arguments regarding the calculation of "demand charges" for Net Metering customers which it considered during the process of its promulgation of the relevant regulation (*Illinois Commerce Commission on its own motion*, Docket No. 07-0483 (2008) – Secone (sic) Notice Order; 3/3/2008). Respondent's 'Restated Motion to Dismiss' also attempts in part to address the substantive matter of the Complaint in discussing, at some length, the distinction between charges for energy use and charges for capacity load, and the calculation of Complainant's Capacity Charge. Although Complainant considers that this latter discussion would be more appropriate in the context of an evidentiary hearing, in the interests of saving time for all concerned, he will also address these matters in this Response.

**The Commission's prior ruling**

In issuing the Second Notice Order referred to above, the Commission explicitly rejected arguments by the Environmental Law and Policy Center (ELPC) (*Illinois Commerce Commission on its own motion*, Docket No. 07-0483 (2008) – Initial Comments; 1/16/2008) that "demand charges" should, for Net Metering customers in the <40 kW Class, which includes the Complainant, be prorated in accordance with energy charges. ELPC's position was, in fact, that a customer who used no net electricity during a billing period should pay no charges whatever to the utility. The Commission clearly and (in Complainant's view) rightly rejected that position. However, Complainant is not suggesting that he should not be required to pay the full amount of all Respondent's **correctly calculated** "demand charges" – which he takes also to include the other line item charges

on his monthly bill that are unaffected by his usage and identical to those paid by non-Net Metering Residential Real Time Pricing (RRTP) customers – even for months on which he may have produced more power than he consumed. Complainant is alleging that the Capacity Charge levied on him by Respondent is improperly calculated, specifically in that the calculation of his Capacity Obligation treats the load imposed by his premises on the system as zero during those peak hours during which he is actually a net producer of power and should (in his view) be credited with the reduction in system load that results from this net production.

### **Capacity Charges and Energy Charges**

Complainant understands and accepts the difference between Capacity Charges and Energy Charges, as set out in the Restated Motion to Dismiss. Complainant notes, however, that Respondent is necessarily using measurements of the energy consumed by its RRTP customers during peak periods as an analog of the load which they are imposing on the system. The average load (in kW) imposed on the system by a customer over a period of one hour is numerically equal to the customer's energy use during that period (in kWh), but what is actually being recorded by the utility meter is the customer's energy use.

As set out in great detail in the Restated Motion to Dismiss, the Capacity Obligation for a RRTP customer is calculated on the basis of the customer's average energy use (relying on the numerical equality noted above) during one of two sets of five peak hours. The use of an average value recognizes the fact that residential customers' electricity usage shows much more variability than that of larger, commercial, customers, so that the use of a single peak hour (or charging a substantial surcharge in real time for usage during peak hours) would be unreasonable. Indeed, Respondent states, in the Restated Motion to Dismiss: "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 use of an average value does, however, somewhat weaken Respondent's argument that the primary determinant of the Capacity Obligation is, or should be, peak load. If the Capacity Obligation were truly intended to reflect the requirement that Respondent "stand ready to meet" the load likely to be imposed on its system by Complainant at peak times, it might be more logical to base it, for all RRTP customers, on each customer's **maximum** usage during those times, or on a calculated value weighted towards the maximum value. The calculation used in practice reflects the variability that exists in residential customers' individual usage, and it also reflects the fact that, from the Respondent's viewpoint, this individual variability tends to balance out over its system, since all its res-

idential customers do not, in fact, put their maximum load on the system at the same time.

Precisely the same argument applies with equal force to Net Metering customers: the customer's average **net** load (counting production as negative load) should give: '...a more reliable picture of the load a customer is imposing on the system at times of maximum loading', since, when producing (net) power, the customer is actually **reducing** the total load on Respondent's system by an amount exactly corresponding to that by which he would be increasing it if he were consuming power at the same rate. The example of the shut down generating plant being assessed a capacity charge which was given by Respondent is not relevant to this argument, even if the facts are correct, since larger commercial users, with or without Behind the Meter Generation (BTMG), and commercial generating plants operate under totally different rules, and their capacity charges are not calculated in the same way.

Unfortunately, the Commission has not specifically addressed the calculation of the Capacity Obligation for small Net Metering customers in any of its regulations or approved tariffs, so it is necessary, in determining whether the approach used by Respondent is reasonable, to argue from the relevant Law and Regulations that do exist.

In Section 16-107.5(e), the amended Public Utilities Act provides (in part) that:

'An electricity provider shall provide to net metering customers electric service at non-discriminatory rates that are identical, with respect to rate structure, retail rate components, and any monthly charges, to the rates that the customer would be charged if not a net metering customer. An electricity provider shall not charge net metering customers any fee or charge or require additional equipment, insurance, or any other requirements not specifically authorized by interconnection standards authorized by the Commission, unless the fee, charge, or other requirement would apply to other similarly situated customers who are not net metering customers.

Since the 'zeroing out' of net production recorded during any of the peak periods in generating the average used for the calculation of Complainant's Capacity Obligation is clearly not applicable to customers who are not Net Metering customers, applying it to Net Metering customers would appear to require specific authorization by the Commission, which has not been granted. Arbitrarily limiting the hourly load values to be used in calculating the Capacity Obligation to be greater than or equal to zero is inherently no more reasonable or obviously appropriate than setting any other arbitrary 'floor' value for them.

Respondent also states that: "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 customers." Com-

plainant understands this point. He notes, however, that the PJM Tariff calculations in the Attachment referred to contain no reference to or provision for the zeroing out of BTMG production during the peak hours. Indeed, by strong implication at least, the numbers used for the PJM calculations appear to be **net** numbers.

Complainant wishes to make clear that he understands and accepts that, even if his average **net** usage in both sets of peak periods used for the calculation of his Capacity Obligation is negative, as was the case for 2010/2011 and is likely to continue to be the case in future, his Capacity Obligation and the resulting Capacity Charge will **not** be negative, but zero (i.e. that he will **not** receive a 'Capacity Credit', but will simply not be assessed a Capacity Charge in years for which that will have been the case). He accepts as entirely reasonable and appropriate the application of a "not less than zero" provision to the Capacity Obligation **after averaging**, since this is a logical consequence of the tariff structure and of the distinction that Respondent validly makes between Capacity Charges and Energy Charges, but he believes that it is entirely inappropriate to apply it to the individual hourly load/generation numbers prior to averaging them.

For all the above reasons, Complainant, Peter R. Fletcher, respectfully requests that Respondent's Restated Motion to dismiss his Complaint be denied, and that an Evidentiary Hearing on the substantive Complaint be scheduled for a date and time convenient to all parties.

Respectfully submitted



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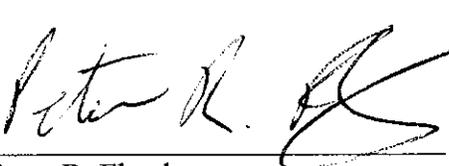
## Certificate of Service

I do hereby certify that on August 26, 2011, I served the foregoing Complainant's Response to 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 indicated below:

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