

**OFFICIAL FILE**  
**ILLINOIS COMMERCE COMMISSION**  
STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

**ORIGINAL**  
ILLINOIS COMMERCE  
COMMISSION

2012 FEB 10 A 10: 54

CHIEF CLERK'S OFFICE

401 NORTH WABASH AVENUE HOTEL )  
CONDOMINIUM ASSOCIATION, )  
 )  
Complainant, )  
 )  
vs. )  
 )  
COMMONWEALTH EDISON COMPANY, )  
 )  
Respondent. )

NO. 12-0110

**FORMAL COMPLAINT**

NOW COMES 401 North Wabash Avenue Hotel Condominium Association ("401 Hotel"), by and through its attorneys, Walker Wilcox Matousek LLP, and for its complaint against Commonwealth Edison Company ("ComEd") states as follows:

**PARTIES**

1. 401 Hotel is a not-for-profit corporation formed in 2007 to establish rules, regulations and procedures for the operation and management of the hotel condominiums located at 401 North Wabash and to protect the interests of the individual unit owners.

2. ComEd is an Illinois corporation with its principal place of business in Chicago, Illinois. ComEd is a public utility within the meaning of the Public Utilities Act and is engaged in the business of providing electric facilities, equipment and power to customers in the State of Illinois, including 401 Hotel. ComEd is regulated by the Illinois Commerce Commission pursuant to the Public Utilities Act, 220 ILCS § 5/1-102.

**JURISDICTION**

3. Jurisdiction before the Commission is proper pursuant to section 10-101 of the PUA, 220 ILCS 5/10-101.

## **STATEMENT OF COMPLIANCE**

4. In accordance with 83 Ill. Adm. Code § 280.170, 401 Hotel previously filed an Informal Complaint with the Commission regarding the matters at issue in this Complaint. 401 Hotel was subsequently advised by the Commission that it was unable to resolve the Informal Complaint to the satisfaction of the parties.

## **ACCEPTANCE OF ELECTRONIC SERVICE**

5. In accordance with Section 200.170 of the Commission's rule of Practice, 401 Hotel hereby agrees to accept electronic service as provided for in Section 200.1050 of the Commission's Rules of Practice, 83 Ill. Adm. Code § 200.1050.

## **BACKGROUND**

6. In or about 2005, 401 North Wabash Venture LLC ("401 Venture") began the development and construction of what is commonly referred to as Trump International Hotel & Tower ("Trump Tower") located at 401 North Wabash.

7. Trump Tower includes space for retail business, condominium residences, other common areas that serve the entire project and hotel condominium units.

8. The hotel condominium units are all available for purchase of partial ownership. When a partial ownership interest in a unit is sold to a private owner, it nevertheless remains in the inventory of Trump Tower as a hotel unit available for hotel guests.

9. There are 286 hotel condominium units located in Trump Tower.

10. During the construction of Trump Tower, as ComEd placed individual meters in each of the hotel condominium units, they were put on an electric residential rate.

11. In early 2011, 401 Hotel became aware that the hotel condominium units should have been on a commercial rate rather than a residential rate and that the meters installed in each

unit should have been recording meters to allow combined billing rather than cumulative meters.

12. In February, 2011, ComEd agreed that the hotel condominium units should have been billed at a commercial rate and beginning with bills dated February 10, 2011, the hotel condominium units' rate was changed from a residential rate to a commercial rate.

13. ComEd did not correctly inform 401 Hotel that the meters should be recording meters rather than the cumulative meters that were installed. In response to requests to ComEd to change the meters from cumulative to recording as would be appropriate for this type of service, ComEd advised that a change of the meters would only be completed if 401 Hotel paid ComEd to change the meters. Installation of the proper meter is the responsibility of ComEd, not the customer.

14. ComEd also failed to issue a refund for the 24 months prior to February 10, 2011 when the hotel condominium units were billed at the residential rate rather than the commercial rate.

15. Pursuant to 222 ILCS 5/9-101, all charges made by ComEd to its customers must be just and reasonable and every unjust or unreasonable charge is prohibited and is unlawful.

16. Charges made by ComEd to the hotel condominium units at the residential rate are unjust and unreasonable and therefore were prohibited and unlawful.

17. Pursuant to 83 Ill. Adm. Code § 280.75, whenever a bill is submitted which is later found to be incorrect due to an error either in charging more than the published rate, in measuring the quantity, or volume of service provided, or in charging for the incorrect class of service, ComEd is required to refund the overcharge with interest from the date of overpayment.

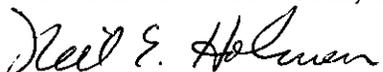
18. ComEd's refusal to change the meters from cumulative to recording results in charges for the incorrect class of service and all charges under cumulative meters is required to be refunded.

WHEREFORE, 401 North Wabash Avenue Hotel Condominium Association respectfully requests the Commission to order the following relief:

1. Ordering ComEd to
  - (a) issue a refund to 401 Hotel as a result of billing the hotel condominiums at the residential rate rather than the commercial rate for the 24-month period prior to February 10, 2011, pursuant to 83 Ill. Adm. Code § 280.75, 220 ILCS 5/9-101 and 252 and 83 Ill. Adm. Code § 280.100; and
  - (b) change the meters in each of the hotel condominium units to recording meters and issue a refund for the previous 24 months for the difference between the rates charged for cumulative and recording meters.

Respectfully submitted,

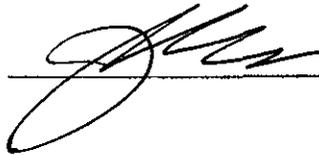
401 NORTH WABASH VENTURE, LLC

By:   
One of its attorneys

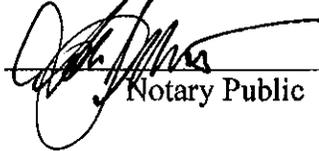
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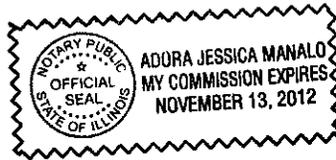
**VERIFICATION**

Under penalties as provided by law, the undersigned certifies that the statements set forth in the foregoing Complaint are true and correct, except as to matters therein states to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

 1/31/12

SUBSCRIBED AND SWORN to  
before me this 31<sup>st</sup> day of  
January, 2012.

  
\_\_\_\_\_  
Notary Public



For Commission Use Only:

Case: \_\_\_\_\_

# FORMAL COMPLAINT

Illinois Commerce Commission  
527 E. Capitol Avenue  
Springfield, Illinois 62701

Regarding a complaint by (Person making the complaint): 401 North Wabash Avenue Hotel Condominium Association

Against (Utility name): Commonwealth Edison

As to (Reason for complaint) See attached Formal Complaint

in Chicago, Illinois.

## TO THE ILLINOIS COMMERCE COMMISSION, SPRINGFIELD, ILLINOIS:

My complete mailing address is (include City) One North Franklin Street, Suite 3200, Chicago, IL 60606

The service address that I am complaining about is 401 North Wabash

My home telephone is [ ] \_\_\_\_\_

Between 8:30 A.M. and 5:00 P.M. weekdays, I can be reached at [ 312 ] 244-6781

My e-mail address is nholmen@wwmlawyers.com I will accept documents by electronic means (e-mail)  Yes  No

(Full name of utility company) Commonwealth Edison Company (respondent) is a public utility and is subject to the provisions of the Illinois Public Utilities Act.

In the space below, list the specific section of the law, Commission rule(s), or utility tariffs that you think is involved with your complaint.

See attached Formal Complaint

Have you contacted the Consumer Services Division of the Illinois Commerce Commission about your complaint?  Yes  No

Has your complaint filed with that office been closed?  Yes  No

Please state your complaint briefly. Number each of the paragraphs. Please include time period and dollar amounts involved with your complaint. Use an extra sheet of paper if needed.

See attached Formal Complaint

Please clearly state what you want the Commission to do in this case:

See attached Formal Complaint

**NOTICE:** If personal information (such as a social security number or a bank account number) is contained in this complaint form or provided later in this proceeding, you should submit both a public copy and a confidential copy of the document. *Any personal information (Social Security Number, Driver's License Number, Medical Records, etc.) contained in the public copy should be obscured or removed from the document prior to its submission to the Chief Clerk's office. Any personal information contained in the confidential copy should remain legible.* If personal information is provided in your public copy, be advised that it will be available on the internet through the Commission's e-Docket website. The confidential copy of any filing you make, however, will only be available to Commission employees. If you file both a public and confidential version of a document, clearly mark them as such.

Today's Date: January , 2012 Complainant's Signature: \_\_\_\_\_  
(Month, day, year)

If an attorney will represent you, please give the attorney's name, address, telephone number, and e-mail address.

Neil E. Holmen, Walker Wilcox Matousek LLP  
One North Franklin Street, Suite 3200, Chicago, IL 60606  
Telephone: 312-244-6781; Email: nholmen@wwmlawyers.com

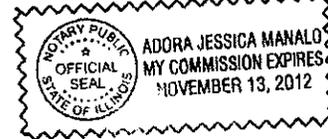
When you finish filling out this complaint form, you need to file the original with the Commission's Chief Clerk. When filing the original complaint, be sure to include one copy of the original complaint for each utility company complained about (referred to as respondents).

**VERIFICATION**

A notary public must witness the completion of this part of the form.

I, John Gorski, Complainant, first being duly sworn, say that I have read the above petition and know what it says. The contents of this petition are true to the best of my knowledge.

[Signature]  
Complainant's Signature



Subscribed and sworn/affirmed to before me on (month, day, year) JANUARY 30, 2012

[Signature]  
Signature, Notary Public, Illinois

(NOTARY SEAL)

**NOTE:** Failure to answer all of the questions on this form may result in this form being returned without processing.