

**ORIGINAL**

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**ILLINOIS COMMERCE COMMISSION**  
STATE OF ILLINOIS  
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COMMISSION

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CHIEF CLERK'S OFFICE

401 NORTH WABASH VENTURE LLC, )  
)  
Complainant, )  
)  
vs. )  
)  
COMMONWEALTH EDISON COMPANY, )  
)  
Respondent. )

NO. 12-0111

**FORMAL COMPLAINT**

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

**PARTIES**

1. 401 Venture is a Delaware limited liability corporation and the developer and owner of the Trump International Hotel & Tower ("Trump Tower") located at 401 North Wabash, Chicago, Illinois 60611.

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 Venture. 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 Venture previously filed Informal Complaint No. 2011-25334 with the Commission regarding the matters at issue in this Complaint. 401 Venture 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 Venture 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 February, 2005, 401 Venture submitted the required load letters to ComEd which ComEd used to determine the Required Transformer Facilities and Standard Transformer Facilities for Trump Tower.

7. Using the load letters submitted by 401 Venture, ComEd was required to and did utilize sound engineering practices to determine the Standard and Required Facilities necessary to provide electric service to Trump Tower.

8. The Standard and Required facilities determined by ComEd engineers was used by ComEd as the basis for the Electric Facilities Service Agreement and the amount of rental to be billed to 401 Venture for Facilities Service. According to the Electric Facilities Service Agreement dated December 6, 2005 between ComEd and the 401 Venture, the total Monthly Rental to be charged was \$10,564.03. A copy of the agreement is attached as Ex. 1.

9. Pursuant to the Illinois Public Utility Act, ComEd has an obligation to correctly bill its customers for all services provided.

10. 401 Venture has the right to rely on the monthly bills it receives from ComEd that the charges are computed correctly.

**CLAIM NO. 1**

11. In derogation of its obligation to correctly bill its customers, for the period April 1, 2009 through March 31, 2011, ComEd billed 401 Venture the amount of \$4,289 instead of \$10,564.03. This error is as a result of ComEd's negligence and lack of quality control.

12. 401 Venture had the right to rely on and presume that the bills it received were computed properly and were accurate.

13. 401 Venture, in good faith and reliance on ComEd's obligation to correctly bill customers for all services provided, believed that the bills it received were correct, paid them and had the right to expect that no further charges would be forthcoming.

14. On or about March 31, 2011, more than 24 months after first billing 401 Venture for the Electric Facilities Rental, ComEd discovered its error and notified 401 Venture that it owed an additional \$150,600.72 (later reduced to \$149,777.28) for non-standard facilities changes (See letter from Katrina Steele dated June 3, 2011 attached as Ex. 2), an amount that exceeds the original bill by 150%.

15. ComEd, as the party responsible for the billing and responsible for the error that created a 150% back charge should not be allowed to collect these charges and unjustifiably create a \$150,000 burden on 401 Venture.

WHEREFORE, 401 NORTH WABASH VENTURE respectfully requests that ComEd be prevented from collecting the \$150,600.72 back charges not previously billed as a result of ComEd's own negligence and mistake.

## CLAIM NO. 2

16. In or about April, 2011, ComEd unilaterally informed 401 Venture that it was implementing a new monthly Rider NS charge of \$12,083.89, rather than the \$10,564.03 amount as specified in the Electric Facilities Service Agreement dated December 6, 2005. See Exs. 1, 2 and 3.

17. ComEd based this increase on an audit of the actual usage of each transformer specified by ComEd as Standard in the original Rider NS. Using the information from the audit, ComEd then concluded that the Standard Transformer Facilities originally specified in Rider NS was wrong. ComEd then amended the Standard Transformers Facilities by eliminating two 2,500 KVA 277/480v transformers, eliminating three 333 KVA 120/240v transformers and eliminating nine 15 KV 200AMP Cutouts, SMD-20 from the list of Standard Transformers Facilities. In addition, ComEd eliminated from the list of Additional Standard Facilities, all items except five 3PH 200A or 600A Cable Bus Fuse Bay. While all of these items were removed from Rider NS, no consideration was applied by ComEd to adjust the Required equipment to reflect the actual loads on each device. The effect of these paper changes was to reduce the charge for Standard Facilities by \$1,519.86 per month. This had the effect of increasing the total facilities monthly rental to 401 Venture from \$10,564.03 to \$12,083.89 per month.

18. The reason the monthly charge to 401 Venture increased even though the Standard Facilities charged decreased is because ComEd adjusted the Standard Facilities charge based on usage but failed to do a similar adjustment to the Required Facilities charge.

19. The amounts determined in the original Rider NS for Required and Standard Facilities charges were both based on the same criteria, "sound engineering practices."

20. However, when the Standard Facilities charges were revised in March, 2011, the change was based on usage. Since a similar change was not done with respect to the Required Facilities charges, the new Facilities Rental amount was no longer based on sound engineering practices, but rather, an inconsistent mix of sound engineering practices and actual usage.

21. Had ComEd done a complete and uniform adjustment to the facilities charges that included a review and an adjustment of the Required Facilities charge, the result would have been little or no increase to 401 Venture for the Facilities charge.

22. Since there was no change to the equipment, just a change to the standard facilities listed on paper, a similar change could have easily been performed for the Required Facilities.

23. Pursuant to 220 ILCS 5/9-101, all rates and charges are required to be just and reasonable. By failing to uniformly adjust both the Standard and Required Facilities charges, the result is an unjust and discriminatory rate increase that is prohibited and unlawful.

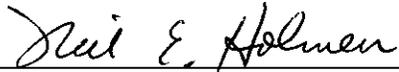
24. The effect of ComEd's change to the Standard Facilities charges without a corresponding change to the Required Facilities charge is to implement a rate increase on a single customer, which is not in compliance with 220 ILCS 5/9-201 and other sections of Illinois statutes including 220 ILCS 5/9-102.

WHEREFORE, 401 VENTURE respectfully requests the Commission to find that ComEd's adjustment to 401 Ventures Standard Facilities charge without a similar adjustment to the Required Facilities charge is excessive, unjustly discriminatory and not in compliance with

Illinois law thereby requiring ComEd to make reparations to 401 Venture, plus interest, under 220 ILCS 5/9-252.

Respectfully submitted,

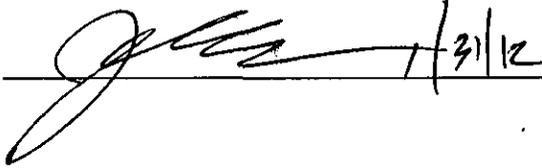
401 NORTH WABASH VENTURE, LLC

By:   
One of its attorneys

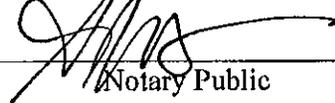
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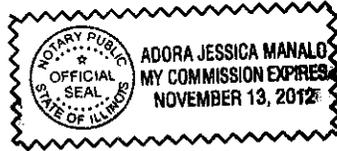
VERIFICATION

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 30<sup>th</sup> day of  
January, 2012.

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



For Commission Use Only:

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

## FORMAL COMPLAINT

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

Regarding a complaint by (Person making the complaint): 401 North Wabash Venture LLC

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

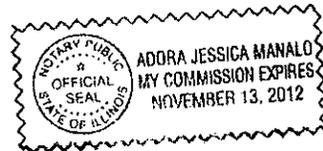
When you finish filling out this complaint form, you need to file the original with the Commission's Chief Clerk. When filing the original complaint, be sure to include one copy of the original complaint for each utility company complained about (referred to as respondents).

**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.