

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

North Shore Sanitary District,	)	
an Illinois Municipal Corporation,	)	
	)	
Complainant,	)	
	)	Docket No. 11-0722
vs.	)	
	)	
Commonwealth Edison Company,	)	
	)	
Respondent.	)	

**VERIFIED ANSWER TO THE FIRST AMENDED VERIFIED COMPLAINT**

Respondent Commonwealth Edison Company (“ComEd”), by and through its attorneys Eimer Stahl LLP, hereby submits its Verified Answer to the First Amended Verified Complaint and states as follows:

**INTRODUCTION AND SUMMARY OF COMPLAINT**

1. This Complaint is based upon a dispute that has risen between the parties as to the duty to repair the Automatic Throw Over (hereinafter “ATO”) equipment located at the North Shore Sanitary District’s Pump Station 4 situated in North Chicago, Illinois and as to the allocation of cost of repairs and to the calculation of the cost of repairs.

**ANSWER:** ComEd admits that North Shore Sanitary District’s (“NSSD”) claim focuses on a dispute that centers around the replacement of non-functioning ATO equipment located at the NSSD’s Pump Station 4 (“PS4”) situated in North Chicago, Illinois and as to the allocation of the cost to replace the non-functioning ATO equipment. ComEd denies the remaining allegations of paragraph 1.

2. The North Shore Sanitary District (hereinafter “NSSD”) contends:
- a. Commonwealth Edison (hereinafter “ComEd”) is required pursuant to a prior contract to repair the ATO and is not entitled to contribution from the NSSD for such repairs.
  - b. Alternatively, if Rider NS is applicable, ComEd [*sic*] interpretation and application of Rider NS is unjust and unreasonable in violation of Section 9-101 of the Public Utilities Act as:

- i. ComEd has inflated the charge for repairing the ATO by characterizing the work to be “new construction” which under ComEd interpretation of Rider NS entitles them to the averaged cost of “new installations” which would include labor costs for an installation where no prior equipment or facilities had previously existed.
- ii. Calculated without consideration of the actual labor cost associated with the repair of the existing ATO with due consideration for any savings in labor costs for the use of existing equipment and facilities.
- iii. Calculated the NS Costs without adhering to the factors established by Rider NS in that the labor costs demanded by ComEd exceeds the actual labor cost to perform the repair.

**ANSWER:** ComEd denies the allegations of paragraph 2(a). ComEd does not provide back-up electric service with automatic switching equipment to its customers as standard service. Rider NS (Nonstandard Services and Facilities) applies and controls over any contract between the parties because the ATO switch is nonstandard equipment. ComEd denies the allegations of paragraph 2(b). Answering further, ComEd states that Rider NS sets forth an equation that ComEd must use in calculating the costs for nonstandard services and facilities. ComEd applied this equation correctly in calculating the costs associated with replacing the ATO switch. ComEd denies the remaining allegations of paragraph 2.

3. ComEd has violated Section 9-102 and 9-104 as ComEd has refused to provide the NSSD and the public with the rates established under Rider NS for the actual labor costs of the work once those rates were established. ComEd has previously established the rates and charges for the replacement of the ATO as ComEd represented that they base such charges upon the average cost of prior jobs involving the installation of new ATOs.

**ANSWER:** Denied.

### **PARTIES**

4. The North Shore Sanitary District, is an Illinois municipal corporation established pursuant to 70 ILCS 2305/0.01 et. al., and incorporated in 1914 with its principal office located at Wm. Koepsel Drive, Gurnee, Illinois 60031.

**ANSWER:** On information and belief, ComEd admits that NSSD is an Illinois municipal corporation with its principal office located at Wm. Koepsel Drive, Gurnee, Illinois

60031. ComEd lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 4, and therefore denies them.

5. ComEd is a corporation organized and existing under the laws of the State of Illinois. ComEd is engaged in supplying and delivering electrical power to the public in northern Illinois. ComEd is a public utility, as that term is defined in Section 3-105 of the PUA. (220 ILCS 5/3-105). ComEd is therefore subject to the Commission's jurisdiction over complaint [*sic*] filed against it by persons and corporations. (220 ILCS 5/10-108). The in state designated agent is Thomas S. O'Neill, 440 S. LaSalle St., Ste. 3300, Chicago, IL 60605, Phone: (312) 394-5400, E-Mail: thomas.oneill@comed.com

**ANSWER:** ComEd admits that it is a corporation organized and existing under the laws of the State of Illinois and that it is engaged in supplying and delivering electrical power to the public in northern Illinois. ComEd admits that it is a public utility, as that term is defined in Section 3-105 of the PUA. (220 ILCS 5/3-105.) ComEd admits that it is subject to the Commission's jurisdiction over complaints filed against it by persons and corporations. (220 ILCS 5/10-108.) ComEd admits that its state-designated agent is Thomas S. O'Neil, 440 S. LaSalle St., Ste. 3300, Chicago, IL 60605, Phone: (312) 394-5400, Email: thomas.oneill@comed.com.

### **COMMON FACTS**

6. The NSSD was established in order to provide sewage treatment to communities along the shore of Lake Michigan in Lake County, Illinois and to divert raw sewage and treated effluent from Lake Michigan and its tributaries.

**ANSWER:** ComEd lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6, and therefore denies them.

7. The NSSD currently has four pump stations located along the Lake Michigan shore that are used to divert raw sewage or treated effluent to one of three advanced treatment plants. A power failure at any one of these facilities creates the potential for the discharge of raw sewage directly into the waters of Lake Michigan.

**ANSWER:** ComEd lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7, and therefore denies them.

8. The facility that is the subject of this complaint is North Chicago Pump

Station 4, (hereafter "PS4"), located at 0 Foss Park and Lake Front, North Chicago, Illinois.

**ANSWER:** On information and belief, ComEd admits that the facility that is the subject of this complaint is North Chicago Pump Station 4, located at 0 Foss Park and Lake Front, North Chicago, Illinois.

9. The NSSD contracted with ComEd to supply necessary equipment to ensure reliable and safe source of emergency power to supply PS4 in the event ComEd was unable to provide power via its normal feed. ComEd installed an ATO and associated equipment to transfer power from the normal electric feed to the emergency feed during electric outages.

**ANSWER:** ComEd admits that NSSD specifically requested a secondary source of power and the capability to automatically switch to a backup power source in the 1970s. ComEd further admits that it installed an ATO and associated equipment to transfer power from the normal electric feed to the emergency feed during electric outages. ComEd denies the remaining allegations of paragraph 9.

10. In December of 2009, the NSSD was notified by ComEd that the ATO was not functioning as intended in that the ATO would not automatically transfer from the normal feed to the emergency feed during a power outage. However, the NSSD was notified that ComEd could manually transfer power from the normal feed to the emergency feed.

**ANSWER:** ComEd admits that in December 2009, the ATO switch stopped functioning, and ComEd determined that the ATO switch was at the end of its useful life and would need to be replaced. ComEd admits that it advised NSSD of this and also notified NSSD that without the ATO, ComEd could manually transfer power from the normal feed to the emergency feed. ComEd denies the remaining allegations of paragraph 10.

11. After NSSD began disputing ComEd's charges to repair the ATO, ComEd informed the NSSD that a motor that operates the ATO was no longer functional and that ComEd would not have the motor repaired. ComEd thereafter informed the NSSD that they were going to replace the ATO with similar equipment.

**ANSWER:** ComEd admits that it verified with the manufacturer that the parts to repair the ATO's 35-year-old motor were no longer available and that the ATO switch was inoperable and obsolete, requiring it to be replaced rather than repaired. ComEd further admits

that it drafted a proposal for the replacement ATO switch and submitted a cost estimate to NSSD for the labor to install the replacement ATO switch, pursuant to Rider NS. ComEd denies the remaining allegations of paragraph 11.

12. ComEd stated that they would not have the motor rebuilt as such a component must be readily available. However, ComEd informed the NSSD that they needed six months to procure the parts to repair the facility with updated parts.

**ANSWER:** ComEd admits that it verified with the manufacturer that the parts to repair the ATO's 35-year-old motor were no longer available and that the ATO switch was inoperable and obsolete, requiring it to be replaced rather than repaired. ComEd denies the remaining allegations of paragraph 12.

13. ComEd representatives informed NSSD staff that the existing transmissions lines and poles, transformer and transformer pad and pole mounted switches could be utilized, but that the motors that operated the switches and the motor's control unit would have to be replaced.

**ANSWER:** ComEd admits that it advised NSSD that the existing ATO was obsolete and that in order to maintain operational functionality, ComEd would need to replace all components associated with the equipment. ComEd denies the remaining allegations of paragraph 13.

14. NSSD was informed that ComEd would not consider this work to be maintenance or repair of the existing facility. ComEd had determined that this work would be categorized as a "new installation".

**ANSWER:** ComEd admits that it advised NSSD that the existing ATO was obsolete and that in order to maintain operational functionality, ComEd would need to replace all components associated with the equipment. ComEd denies the remaining allegations of paragraph 14.

15. ComEd informed the NSSD that the work would require 418 man hours based upon the average time ComEd had experienced for new installations of ATO's with 34k volt transformed to and metered at 480 volts.

**ANSWER:** ComEd admits that it informed the NSSD that replacement of the ATO

would require 418 man hours of labor. ComEd further admits that such figure is supported by the average time ComEd had experienced for installations of ATOs with 34k volt transformed to and metered at 480 volts. ComEd denies the remaining allegations of paragraph 15.

16. ComEd submitted rudimentary electrical drawing for the ATO facility and a contract for the “new installation” seeking the sums varying from \$117,463.29 to \$146,180.38 for the labor costs.

**ANSWER:** ComEd admits that it submitted NSSD proposed contracts for replacement of the ATO switch in the amounts of \$117,463.29 on February 4, 2010, \$133,427.23 on November 8, 2010 (and again on November 19, 2010). ComEd further answers that in its November 19, 2010 memorandum to NSSD, ComEd advised NSSD that because of the Small Business Jobs Act signed into law on September 27, 2010, NSSD would receive a cost reduction if the contract were signed and the project completed by the end of 2010. ComEd denies the remaining allegations of paragraph 16.

17. On information and belief, based upon the proposal submitted and representations, NSSD staff believes that ComEd labor costs were for the removal the two existing motor drives and motor drive controller of the ATO with two new motor drives and motor drive controller ATO.

**ANSWER:** ComEd lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17, and therefore denies them.

18. NSSD requested that ComEd provide additional information to substantiate ComEd’s determination that the existing ATO is non-functional and can not be repaired. ComEd has refused to provide the requested information.

**ANSWER:** ComEd admits that NSSD has requested additional information to substantiate ComEd’s determination that the ATO is non-functional and must be replaced. Answering further, ComEd states that it has provided NSSD with such information on numerous occasions and has had conversations regarding this determination. ComEd denies the remaining allegations of paragraph 18.

19. NSSD has requested that ComEd provide additional information as to the labor costs. NSSD staff is comprised of engineers and engineering technicians that have substantial experience estimating labor costs and were alarmed at ComEd's demands which were represented to be solely for costs associated with the labor that would be necessary to repair the ATO.

**ANSWER:** ComEd states that Rider NS sets forth an equation ComEd must use in calculating costs for nonstandard services and facilities. ComEd has not deviated in any manner from the Rider NS equation to calculate the costs for replacement of the ATO switch. ComEd lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 19 as they related to the NSSD staff and its response to the information provided by ComEd, and therefore denies them. ComEd denies the remaining allegations of paragraph 19.

20. ComEd response to NSSD's request for additional information concerning labor costs was to break the labor costs into three lump sums and a charge for calibration and indicate that these costs were associated with the labor that would be required at three different locations.

**ANSWER:** ComEd admits that as part of the information provided to NSSD relating to the replacement of the ATO, ComEd provided a description of the project locations along with the costs allocated to each location. Furthermore, ComEd admits that it provided NSSD with the costs associated with calibrating the new ATO. ComEd denies the remaining allegations of paragraph 20.

21. The NSSD requested information as to the three locations and calibration and the scope of the work that was necessary at these sites but ComEd refused to provide any additional information indicating that the NSSD had received more detail than required.

**ANSWER:** Denied.

22. On information and belief, the labor costs far exceed the estimated costs to swap out the ATO unit at a location where an ATO had previously been installed.

**ANSWER:** Denied.

23. On information and belief, the labor costs appear to be for a "new installation" of an ATO at a location where no ATO previously existed.

**ANSWER:** ComEd denies the allegations of paragraph 23. ComEd notes, however, that the “new installation” classification is irrelevant. Rider NS applies to costs other than those simply associated with “new installation.” Rider NS clearly states that, in addition to recovering the costs of “new installation,” ComEd must recover other costs, including those for “replacing” and “maintaining” pre-existing facilities. Thus, Rider NS applies to the costs associated with replacing the non-functioning and obsolete ATO switch.

24. ComEd continues to refuse to provide specific information as to the scope of the work needed to repair the ATO.

**ANSWER:** Rider NS sets forth an equation ComEd must use in calculating costs for nonstandard services and facilities. ComEd has not deviated in any manner from the Rider NS equation to calculate costs for replacement of the ATO switch. ComEd denies the remaining allegations of paragraph 24.

25. NSSD has not requested new or different service since the installation of the ATO in approximately 1973.

**ANSWER:** ComEd admits that NSSD has not requested new or different service since the installation of the ATO in approximately 1973. ComEd notes, however, that this fact is immaterial since Rider NS applies to nonstandard services or facilities such as the ATO switch.

### **COUNT I**

26. Reallege paragraphs 6 through 25 as Paragraph 26 of Count I.

**ANSWER:** ComEd incorporates by reference, as if fully set forth herein, its responses to ¶¶ 1-25 of this First Amended Verified Complaint.

27. On or about June 12, 1973, in the County of Lake, Illinois, NSSD and ComEd entered into an agreement in writing, whereby ComEd agreed on ComEd’s part to install, construct and maintain a Electric Service Station including transformers, protective apparatus, supply line and other electrical equipment as provided in Exhibit A of the Electric Service Station Agreement, a copy of said agreement is attached hereto as “Exhibit A” and incorporated herein by this reference.

**ANSWER:** ComEd admits that Exhibit A to NSSD's Amended Complaint is an Electric Service Station Agreement dated June 12, 1973 between ComEd and NSSD. ComEd further answers that the Agreement speaks for itself and the remaining allegations of paragraph 27 are therefore denied to the extent that they are inconsistent with the Agreement.

28. NSSD has duly performed all terms and conditions of the agreement on NSSD's part to be performed.

**ANSWER:** The allegations of paragraph 28 state a legal conclusion to which no response is required.

29. The contract specifically provided that the equipment would be maintained and repaired by ComEd.

**ANSWER:** ComEd answers that the Agreement speaks for itself, and the allegations of paragraph 29 are therefore denied to the extent that they are inconsistent with the Agreement.

30. ComEd has not performed the agreement on ComEd's part as ComEd has failed to maintain the ATO equipment that was part of the installation of the Electric Service Station as the ATO equipment no longer functions as intended.

**ANSWER:** Denied.

31. At all times, the ATO equipment remained the property of ComEd and was under ComEd's sole control.

**ANSWER:** The allegations of paragraph 31 state a legal conclusion to which no response is required.

32. That from 1973 through December of 2009, ComEd maintained and repaired the ATO without contribution from the NSSD pursuant to the parties' agreement.

**ANSWER:** ComEd admits that over the years in which the ATO switch was in service at the NSSD site, it maintained and repaired the ATO switch on numerous occasions without contribution from NSSD. ComEd further answers that the Agreement speaks for itself, and the remaining allegations of paragraph 32 are therefore denied to the extent that they are inconsistent with the Agreement.

33. That at no time has the NSSD requested new or different service for the provision of an emergency electrical feed.

**ANSWER:** ComEd lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 33, and therefore denies them.

34. The agreement between the parties establishing the duties of the parties does not condition the performance of ComEd upon the payment of any additional monies to maintain and service the ATO.

**ANSWER:** ComEd answers that the Agreement speaks for itself, and the allegations of paragraph 34 are therefore denied to the extent that they are inconsistent with the Agreement.

35. NSSD is entitled pursuant to the terms of the agreement that ComEd maintain the ATO as part of the service which the parties have contracted.

**ANSWER:** ComEd answers that the Agreement speaks for itself, and the allegations of paragraph 35 are therefore denied to the extent that they are inconsistent with the Agreement.

36. That NSSD has not requested new or different services.

**ANSWER:** ComEd admits that NSSD has not requested new or different services.

## **COUNT II**

37. NSSD hereby realleges paragraphs 26 through 36 of Count I as Paragraph 37 of Count II.

**ANSWER:** ComEd incorporates by reference, as if fully set forth herein, its responses to ¶¶ 26-36 of this First Amended Verified Complaint.

38. On or about February 4, 2010 ComEd submitted to NSSD an Electric Facilities Service Agreement herein (after "EFSA") for PS4 which demanded payment of \$117,463.29 for the replacement of the ATO that ComEd alleges is not functioning. A copy of which is attached hereto as Exhibit B.

**ANSWER:** ComEd admits that on or about February 4, 2010 it submitted to NSSD an Electric Facilities Service Agreement herein (after "EFSA") for PS4 which requested payment of \$117,463.29 for the replacement of ATO. ComEd denies the remaining allegations

of paragraph 38.

39. The EFSA stated that the payment of \$117,463.29 was for labor only. Paragraph 5a of Exhibit B.

**ANSWER:** ComEd admits that the EFSA stated payment amount of \$117,463.29 was for "PASSPORT LABOR ONLY".

40. The EFSA provided that the charge for labor was for work that would be performed during ComEd's regular working hours, unless otherwise agreed. Paragraph 5e of Exhibit B.

**ANSWER:** ComEd admits that the EFSA provided that the installation will be done during ComEd's regular working hours, unless otherwise mutually agreed upon. ComEd denies the remaining allegations of paragraph 40.

41. On or about November 8, 2010, ComEd submitted to NSSD a revised EFSA for PS4 which demanded payment of \$133,427.23 for the replacement of ATO that ComEd alleges is not functioning. A copy of which is attached hereto as Exhibit C.

**ANSWER:** ComEd admits that on or about November 8, 2010, it submitted to NSSD a revised EFSA for PS4 which requested payment of \$133,427.23 for the replacement of ATO. ComEd denies the remaining allegations of paragraph 41.

42. The revised EFSA stated that the payment of \$133,427.23 was for labor only. Paragraph 5a of Exhibit C.

**ANSWER:** ComEd admits that the revised EFSA stated payment amount of \$133,427.23 was for "PASSPORT LABOR ONLY".

43. The revised EFSA provided that the charge for labor was for work that would be performed during ComEd's regular working hours, unless otherwise agreed. Paragraph 5e of Exhibit C.

**ANSWER:** ComEd admits that the revised EFSA provided that the installation would be done during ComEd's regular working hours, unless otherwise mutually agreed. ComEd denies the remaining allegations of paragraph 43.

44. That prior to November 8, 2012 and after December 8, 2011 the labor cost was \$146,180.38 as indicated in ComEd's letter dated November 19, 2010, a copy of which is attached hereto as Exhibit D.

**ANSWER:** ComEd admits that the November 19, 2010 letter states that the Small Business Jobs Act (“SBJA”) allowed for a temporary cost reduction if the contract was signed and the project completed prior to the end of 2010. ComEd admits that, as indicated in its letter, without the SBJA reduction, the labor cost would have been \$146,180.38. ComEd denies the remaining allegations of paragraph 44.

45. NSSD staff was alarmed by the labor costs requested by ComEd in the EFSA and the revised EFSA and requested ComEd to provide additional information as to the charges that ComEd was attempting to impose upon the NSSD.

**ANSWER:** ComEd lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 45, and therefore denies them.

46. ComEd representatives stated that Rider NS required the NSSD to pay the labor costs established by ComEd for the ATO and that the charges were not subject to negotiation or itemization.

**ANSWER:** ComEd admits that Rider NS prescribes specifically how much ComEd must calculate the costs associated with providing nonstandard services and facilities and that ComEd must recoup these costs. ComEd admits that it has no discretion to bear the costs itself because doing so would be to the detriment of all of ComEd’s other customers who would bear the cost of service without reaping any of its benefits. ComEd denies the remaining allegations of paragraph 46.

47. ComEd refused to provide any itemization as of the amount demanded. Except in a lump sum form, relative to the three electric poles the equipment was located and a charge for calibration. A copy of which is attached as Exhibit E.

**ANSWER:** ComEd admits that as part of the information provided to NSSD relating to the replacement of the ATO, ComEd provided a description of the project locations along with the costs allocated to each location. Furthermore, ComEd admits that it provided NSSD with the costs associated with calibrating the new ATO. ComEd denies the remaining allegations of paragraph 47.

48. ComEd representatives stated that ComEd was not required to provide specific information as to the nature of the charges or rates being imposed pursuant to Rider NS upon the NSSD. ComEd representatives also indicated that the break down of costs contained in Exhibit E was more information than ComEd was required to provide NSSD.

**ANSWER:** Rider NS sets forth an equation ComEd must use in calculating the costs for nonstandard services and facilities. It dictates the variables ComEd must include when calculating costs under Rider NS. ComEd denies the remaining allegations of paragraph 48.

49. The NSSD attempted to determine whether the charges were just and reasonable by meeting with representatives of ComEd. The parties meet on several occasions to discuss the charges.

**ANSWER:** ComEd admits that it met with NSSD on several occasions to discuss the charges. ComEd lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 49, and therefore denies them.

50. During a meeting on September 27, 2011 with ComEd representatives, representatives of NSSD and State Representative Karen May, ComEd stated and represented that the man hours were based upon the average cost of similar installations of ATOs and the estimate of man hours to complete the installation was 418 hours.

**ANSWER:** ComEd admits that ComEd representatives, NSSD representatives and State Representative Karen May met on or about September 27, 2011. ComEd denies that it based the number of man hours necessary to complete the ATO installation on the average cost of similar installations. ComEd denies the remaining allegations of paragraph 50.

51. ComEd's composite rate utilized for estimating costs for normal construction highest rate is \$161.29 as stated in General Company Order No. 25, Appendix G. A copy of General Company Order No. 25, Appendix G is attached hereto as Exhibit F.

**ANSWER:** ComEd answers that the General Company Order No. 25 speaks for itself, and the allegations of paragraph 51 are therefore denied to the extent that they are inconsistent with such order.

52. Calculating the labor cost at \$161.29 per hour and the 418 man hours that ComEd represented was required to complete the project, the total labor cost should not have exceeded \$67,419.22.

**ANSWER:** ComEd agrees that \$161.29 multiplied by 418 equals \$67,419.22.

ComEd denies the remaining allegations of paragraph 52.

53. Calculating the labor cost at \$144.19 per hour and the 418 man hours that ComEd represented was required to complete the project, the total labor cost should not have exceeded \$60,217.42.

**ANSWER:** ComEd admits that \$144.19 multiplied by 418 equals \$60,217.42.

ComEd denies the remaining allegations of paragraph 53.

54. ComEd continues to deny NSSD's request to provide specific information as to the hourly labor rate of personnel required to repair the ATO, information as to the categories of personnel, the scope of work to be performed and any other information necessary to validate the labor cost of the project.

**ANSWER:** Denied.

55. The NSSD commissioned Donohue & Associates, an engineering firm located in Sheboygan, Wisconsin to evaluate the ComEd's labor costs involved in repairing the automatic throw over switches, controls, wiring and repair cross arms and dead ends between the two switches. A copy of the study is attached hereto as Exhibit G.

**ANSWER:** ComEd lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 55, and therefore denies them.

56. Donohue's cost study found that the man hours were estimated to be between 240 and 320 man hours to remove and replace the ATO.

**ANSWER:** ComEd lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 56, and therefore denies them.

57. Donohue's cost study found that estimated cost to complete the project ranged between \$35,000.00 and \$51,200.00. The hourly labor rate varied between \$145.83 and \$160.00 per hour.

**ANSWER:** ComEd lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 57, and therefore denies them.

58. ComEd's hourly labor rates contained in General Company Order No. 25 range from \$144.19 to \$161.29 and are within the range of rates that the Donohue study found to be charged for the contemplated scope of work. Exhibit F.

**ANSWER:** ComEd answers that the General Company Order No. 25 speaks for itself and the allegations of paragraph 58 are therefore denied to the extent that they are

inconsistent with such order. With regard to the allegations relating to the “Donohue study,” ComEd lacks knowledge or information sufficient to form a belief as to the truth of those allegations, and therefore denies them.

59. ComEd’s charge for the replacement of the PS-4 ATO based upon ComEd’s representation that the work required 418 man hours is \$78,761.16 in excess of ComEd’s highest composite rate for estimating construction costs.

**ANSWER:** Denied.

60. On information and belief, the total man hours required to replace the ATO at PS4 would require between 240 and 320 man hours.

**ANSWER:** Denied.

61. On information and belief, the hourly rate of pay for labor, based on class of the laborer, required to replace the ATO at PS4 would be between \$144.19 and \$161.29.

**ANSWER:** Denied.

62. That the amount of \$146,180.38 demand by ComEd exceeds the lowest estimated cost by \$111,180.38 and exceeds the highest estimated cost by \$94,980.38.

**ANSWER:** Denied.

63. That ComEd has an affirmative duty that all rates or other charges made, demanded or received by ComEd for any product or commodity furnished or to be furnished or for any service rendered or to be rendered shall be just and reasonable under Section 9-101 of the Public Utilities Act.

**ANSWER:** The allegations of paragraph 63 state a legal conclusion to which no response is required.

64. On information and belief, ComEd has established such charge in violation of Rider NS as the charge exceeds by over a factor of two the highest composite rate of ComEd and the highest rate of private contractors.

**ANSWER:** Denied.

65. That based upon the totality of the circumstances ComEd’s demanded charge is unjust and unreasonable as said charge greatly exceeds the actual cost of repairs.

**ANSWER:** Denied.

### COUNT III

66. NSSD reallege paragraphs 37 through 65 of Count II as paragraph 66 of Count III.

**ANSWER:** ComEd incorporates by reference, as if fully set forth herein, its responses to ¶¶ 37-65 of this First Amended Verified Complaint.

67. NSSD staff has made repeated requests upon ComEd representatives for rates and other charges and classifications, rules and regulations relating to the labor costs for the ATO that ComEd was to repair at PS4.

**ANSWER:** ComEd admits that NSSD has requested information relating to the replacement costs associated with replacing the ATO. ComEd denies the remaining allegations of paragraph 67.

68. ComEd has refused to provide the requested information concerning rates and other charges and classifications, rules and regulations relating to the ATO that ComEd was to repair at PS4 that ComEd utilized to determine the average labor cost of installations of ATOs.

**ANSWER:** Denied.

69. ComEd has repeatedly stated that NSSD is not entitled to more than the lump sum amount characterized as Passport Labor Costs.

**ANSWER:** Denied.

70. ComEd has represented to the NSSD that ComEd has established a charge pursuant to Rider NS based upon the average cost of similar jobs rather than actual costs of the specific repair of ATO located at NSSD's PS4.

**ANSWER:** ComEd admits that it has established a charge pursuant to the equation to be used in calculating costs for nonstandard services and facilities as required by Rider NS. ComEd further answers that the costs of similar jobs support the charges it has requested from NSSD with regard to replacement of its ATO. ComEd denies the remaining allegations of paragraph 70.

71. ComEd has compiled average costs of similar jobs but has not published such rates and other charges and classifications, rules and regulations relating thereto, applicable to such service, product or commodity.

**ANSWER:** ComEd admits that it has performed jobs similar to the replacement of NSSD's ATO and has calculated the costs for such jobs in accordance with Rider NS. ComEd denies the remaining allegations of paragraph 71.

72. Section 9-104 of the Public Utility Act provides:

No public utility shall undertake to perform any service or to furnish any product or commodity unless or until the rates and other charges and classifications, rules and regulations relating thereto, applicable to such service, product or commodity, have been filed and published in accordance with the provisions of this Act.

**ANSWER:** The allegations of paragraph 72 state a legal conclusion to which no response is required.

73. Section 9-102 of the Public Utility Act provides:

Every public utility shall file with the Commission and shall print and keep open to public inspection schedules showing all rates and other charges, and classifications, which are in force at the time for any product or commodity furnished or to be furnished by it, or for any service performed by it, or for any service in connection therewith, or performed by any public utility controlled or operated by it.

**ANSWER:** The allegations of paragraph 73 state a legal conclusion to which no response is required.

74. As ComEd has established the rate and charges for the average labor cost of the installation of ATO, ComEd is required pursuant to Section 9-102 to publish the rates and charges of the average cost of installation of ATOs.

**ANSWER:** The allegations of paragraph 74 state a legal conclusion to which no response is required.

75. Once ComEd has established the rate and charges for the labor cost of the repair of an ATO, ComEd is required pursuant to Section 9-104 before ComEd may undertake to perform or provide such service or furnish such product to publish the rates and other charges and classifications, rules and regulations relating thereto, applicable to such service or product.

**ANSWER:** The allegations of paragraph 75 state a legal conclusion to which no response is required.

76. ComEd has determined the rates and other charges and classifications, rules and regulations relating thereto, applicable to such service or product as ComEd has made demand upon the NSSD for the sum total of these rates and charges, which include the classifications, rules and regulations relating thereto as evidenced by EFSA contained in Exhibits B, C, D for the repair of the ATO located at NSSD's PS4.

**ANSWER:** ComEd admits that it has calculated the costs associated with the replacement of the ATO in accordance with Rider NS and other applicable authority, and ComEd has requested that NSSD pay such amount if it would like ComEd to proceed with the installation. The remaining allegations of paragraph 76 are denied.

**NSSD HAS COMPLIED WITH SECTION 280.170  
OF TITLE 83 OF THE ILLINOIS ADMINISTRATIVE CODE**

77. On March 10, 2010 the NSSD submitted to the Commission an Informal Complaint pursuant to Section 10-108 of the PUA and Section 200.160 of the Commission's Rules of Practice (83 Ill. Admin. Code 200.160) and was assigned case number 2010-04089. The parties have had continuing discussions regarding this matter and ComEd refuses to provide any relief to the NSSD. Therefore, Complainant has complied with Section 200.160.

**ANSWER:** The allegations of paragraph 77 state a legal conclusion to which no response is required.

78. The North Shore Sanitary District agrees to accept service by electronic means as follows: Gregory T. Jackson: gtjlaw@gmail.com

**ANSWER:** The allegations of paragraph 78 state a legal conclusion to which no response is required.

WHEREFORE, Respondent Commonwealth Edison denies that Petitioner North Shore Sanitary District is entitled to any relief whatsoever and respectfully requests: (a) that Petitioner takes nothing by its action; (b) that the Commission dismiss Petitioner's claims with prejudice; (c) that the Commission assess costs and fees against Petitioner; and (d) that the Commission award ComEd such other and further relief to which it may be justly entitled.

Dated: October 5, 2012

Respectfully submitted,

*Jonathan M. Wier*

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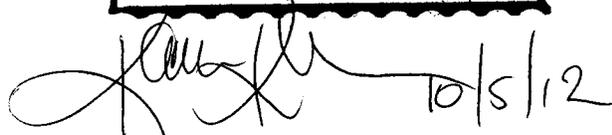
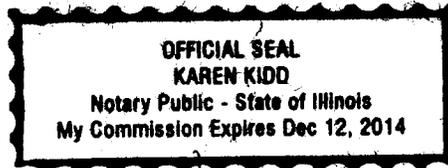
*Counsel for Respondent Commonwealth  
Edison Company*

**VERIFICATION**

I, Pamela S. Anton, Senior Account Manager, Large Customer Solutions, North Region, for Commonwealth Edison Company, state under oath and penalty of perjury, that I have read the foregoing VERIFIED ANSWER TO THE FIRST AMENDED VERIFIED COMPLAINT and know the contents thereof, that all statements made herein are true and correct to the best of my knowledge and belief, and that all statements of lack of information sufficient to form a belief are true and correct to the best of my knowledge.



\_\_\_\_\_  
Pamela S. Anton



10/5/12  
for Pamela Anton