

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

KING'S WALK CONDOMINIUM)
)
 Petitioner,)
)
 v.)
)
 COMMONWEALTH EDISON COMPANY,)
)
 Respondent.)
)
 Complaint as to refund the balance of)
 overcharges/overpayments for electricity in)
 Rolling Meadows, Illinois)

Docket No. 08-0264

COMMONWEALTH EDISON COMPANY'S INITIAL BRIEF

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I. INTRODUCTION

After several years of discovery, motion practice and rulings from the Administrative Law Judge (“ALJ”) and the Illinois Commerce Commission (“Commission”), the claims that remained for trial were but a shadow of the claims brought by King’s Walk Condominium Association (“King’s Walk” or “Petitioner”) in early 2008. Only three claims survive: (1) that King’s Walk was on the wrong rate(s) since April 11, 2006, (2) that Commonwealth Edison Company (“ComEd”) owes Rider CABA – Common Area Billing Adjustment credits (“CABA Credits”), and (3) that King’s Walk is somehow inappropriately billed on seven accounts, rather than a single account.

While ComEd contends that none of these arguments have merit, two things are clear. First, the amounts at issue in this case are not substantial. Because of the ALJ’s July 27, 2011 Interim Order ruling that the majority of King’s Walk’s claims are time-barred, only about \$54,000 is at issue with regard to the rates that ComEd charged King’s Walk. The CABA Credits issue is, at bottom, a dispute over approximately \$4,435 (the difference between what King’s Walk claims it is owed and the amount that ComEd has agreed to pay pursuant to its calculation based on the tariff’s formula). Lastly, King’s Walk has failed to quantify and support any harm it has suffered relating to its claim that it should have been billed on a single account (although it may be an element of the larger \$54,000 claim). In fact, it is not clear that King’s Walk suffered any loss stemming from the use of more than one meter.

Second, with regard to all three claims, the party with the burden in this proceeding, King’s Walk, has provided no evidence or confusing evidence, at best, to support its claims. The “evidence” to support its issue with regard to the rates charges is a jumbled spreadsheet prepared by someone other than King’s Walk’s testifying expert showing inaccurate information relating

to billings. King's Walk's theory as to the rate reclassifications is also legally unsound because the evidence shows that the rate switches at issue (reflected on the spreadsheet) were done in accordance with tariffs and statute. With regard to the CABA Credits, King's Walk's calculation misapplies the formula in Rider CABA and its own expert is unwilling to vouch for the calculation. ComEd has properly made the calculation and concedes that it owes a credit of \$1,830.86. Finally, with regard to its claim that King's Walk was somehow injured because it is billed on seven accounts rather than a single account, no analysis was presented on this issue. In fact, King's Walk may have benefitted from the separate account billing methodology (because as separate accounts each account is entitled to one meter without additional meter lease charges and nonstandard facilities rentals may apply to a single combined billed account methodology). In any event, King's Walk presented no evidence on this claim and, in fact, its expert was barred from doing so at the evidentiary hearing.

ComEd requests an order denying relief to King's Walk other than the application of the CABA Credits, as correctly calculated by ComEd, and the application of the residential space heating supply charges for the two accounts that were overlooked for a short period of time.

II. PROCEDURAL HISTORY

On April 11, 2008, King's Walk filed a Formal Complaint against ComEd alleging that on November 14, 1996, ComEd switched King's Walk's residential Rate 14 accounts to commercial Rate 6 accounts, and that ComEd continued to charge King's Walk at an incorrect commercial rate from November 14, 1996 through July 20, 2006, and from January 2, 2007 up to the date of its complaint. King's Walk also alleged that it was not paid all of the CABA Credits

that it was entitled to – though it did admit that some of the credits were paid. Finally, King’s Walk alleges that it was wrongfully billed on seven accounts rather than on a single account.¹

On March 10, 2009, ComEd filed a Motion to Dismiss asserting, among other things that Petitioner’s claim was time-barred by the applicable statute of limitations, 220 ILCS 5/9-252, which required Petitioner to have filed its action within two years of the date the service at issue was provided. On July 27, 2011, the Commission entered the Interim Order which applied Section 9-252’s two-year statute of limitations to Petitioner’s claims that it was being charged at the wrong rate and barred all such claims arising prior to April 11, 2006. Given that Petitioner’s claims prior to April 11, 2006 were barred, the ALJ and the parties concurred that Rate 6 was no longer an issue in the case.

Pursuant to notice, the matter came on for a pre-trial status on October 2, 2012. At that status, the ALJ considered ComEd’s Motion *in Limine* as it related to King’s Walk’s expert, Mr. Charles Prettyman. With regard to the nine opinions that Mr. Prettyman espoused in his expert disclosure, the ALJ granted ComEd’s motion with regard to five of those opinions for various reasons. That left only four of Mr. Prettyman’s opinions for trial.

An evidentiary hearing was held on October 3, 2012. At the hearing, King’s Walk presented three witnesses: Deborah Habeck (King’s Walk board member), Jeremy Quattrochi (King’s Walk building management), and Charles Prettyman (expert witness). ComEd presented two company witnesses: David Geraghty (manager of the electric supplier services department) and John Leick (senior rate administrator). At the conclusion of the evidentiary hearing, the record was marked “Heard and Taken.”

¹ While Petitioner contends that it has 13 claims against ComEd, counsel admitted that they all “arise out of three core sets of facts.” Tr. at 64-65. Again, those three core sets of facts are CABA credits, multiple accounts/combined billing, and Petitioner’s allegations that it was on the wrong rates.

The ALJ ordered simultaneous Initial Briefs to be filed on November 27, 2012, with simultaneous Reply Briefs to be filed on January 4, 2012.

III. LEGAL STANDARD

It is well-settled that the *Petitioner*, as the party seeking relief, has the burden of proof and the Commission's findings should be based on whether the Petitioner has satisfied that burden. *R.H. Donnelly, Inc. d/b/a Dex One as agent for Illinois Bell Telephone Co.*, ICC Docket No. 11-0668, Order (November 20, 2012) at 14. The applicable standard of proof in a contested case hearing before the Commission requires Petitioner to prove its claim by a preponderance of the evidence. 5 ILCS 100/10-15. Where the Petitioner is unable to prove by a preponderance of the evidence that it was overcharged by the utility for service, the Complaint should be denied. *New Jerusalem Pentecostal Ministries v. Illinois Power Co. d/b/a AmerenIP*, ICC Docket No. 10-0292, Order (April 12, 2011) at 7-8.

IV. SUMMARY OF PETITIONER'S TESTIMONY AND EVIDENCE

A. TESTIMONY OF DEBORAH HABECK

1. Direct Testimony

Ms. Habeck is a resident at King's Walk and currently serves on its board of directors. Tr. at 70-71. Ms. Habeck described King's Walk as 11 buildings that house 216 condominium units. Tr. at 71. She testified that the common areas of King's Walk have electric heaters served by ComEd under seven separate accounts. Tr. at 71-73. Ms. Habeck testified that she "became aware" that such an arrangement costs more, but provided no evidence as to where she learned that, the basis for such a statement, and she did not quantify any amount. Tr. at 73. Ms. Habeck testified that a Mr. Marshall Shifrin attempted to get the accounts consolidated "on behalf of

Kings Walk,” and that the property manager “might” have as well. Tr. at 78. She did not testify that anyone directly affiliated with King’s Walk ever made such a request.

Ms. Habeck acknowledged that ComEd refunded certain overcharges but contended that they were entitled to more. Tr. at 79. Ms. Habeck testified that she was informed that King’s Walk had been placed on a commercial rate and, as a result, King’s Walk filed a complaint with the Commission. Tr. at 81. When Ms. Habeck began testifying as to what may or may not have been in association meeting minutes, counsel for ComEd objected because these records had been requested in the course of the litigation but not produced. Tr. at 84-85. Counsel for King’s Walk withdrew the line of questioning. Tr. at 85. Ms. Habeck then testified that King’s Walk had – since January 2007 – made an effort to be switched to a lower electric rate and to have its accounts consolidated, but gave no information or details surrounding that effort. Tr. at 85.

2. Cross-Examination Testimony

On cross-examination, Ms. Habeck again acknowledged that King’s Walk had received a refund for overcharges from ComEd. Tr. at 87. She testified that she never compared the bills with the refunds in order to determine whether the refund for any given month was insufficient. Tr. at 88. Ms. Habeck admitted that she was aware that certain of King’s Walk’s claims were barred by the statute of limitations. Tr. at 89.

With regard to the CABA Credits that King’s Walk purports to be owed, Ms. Habeck testified that she is not even generally familiar with them nor did she ever perform any such actual calculation. Tr. at 89. She testified “[t]hat’s why we had Marshall [Shifrin] working with us.” Tr. at 90. She also testified that her understanding that it would have been advantageous for King’s Walk to be on a single account came from Mr. Shifrin. Tr. at 89-90. Importantly, Mr. Shifrin did not provide any testimony at the evidentiary hearing although he is party to some sort

of an agreement that entitles him to a percentage of the amount that King's Walk is refunded in this proceeding. Tr. at 92.

B. TESTIMONY OF JEREMY QUATTROCHI

1. Direct Testimony

Mr. Quattrochi has been the property manager at King's Walk responsible for receiving, reviewing and paying the electric bills. Tr. at 93-94. He testified that King's Walk is on seven accounts for its ComEd electric service. Tr. at 94. He testified that of the buildings he has managed, King's Walk is the only all-electric one. Tr. at 95. With regard to the other buildings that he manages, he stated, "[w]e get one bill for the other accounts with subaccounts labeled out for if there is other buildings on site." Tr. at 96. Mr. Quattrochi then testified that Mr. Shifrin had "found some irregularities with the billing" at King's Walk and proceeded to generally identify those issues. Tr. at 97. He testified that he had not authorized ComEd to switch King's Walk from a residential rate to a commercial rate but confessed that he wasn't sure which of the two rates was higher. Tr. at 98, 100, 107.

Mr. Quattrochi, like Ms. Habeck, testified that after the filing of the informal complaint, ComEd issued a refund to King's Walk. Tr. at 98-99. However, he testified that the consultant claimed King's Walk was owed more, so they had him try to get additional money from ComEd and to get the billing corrected. Tr. at 99. Mr. Quattrochi attested to the ComEd bills which were then moved into evidence as King's Walk Exhibit 1.0. Tr. at 102-106.

2. Cross-Examination Testimony

On cross-examination, Mr. Quattrocchi admitted that he never personally took issue with the amount of the refund from ComEd, nor was he knowledgeable as to whether King's Walk did so. Tr. at 108. Mr. Quattrocchi testified that he was not offering any opinion as to whether a

statute or a tariff would allow ComEd to switch a customer's rate – in fact, he indicated that this was “[n]ot my department.” Tr. at 108, 109. Mr. Quattrocchi professed to have no familiarity with CABA Credits, and had nothing to do preparing any documents reflecting damages. Tr. at 108-109. Mr. Quattrocchi also indicated that he had not performed any analysis as to whether King's Walk would have saved any money had it been billed on a single account. Tr. at 110. He indicated that “[t]he consultant has,” but that the consultant was Mr. Shifrin, not King's Walk's testifying expert, Mr. Prettyman. Tr. at 110.

3. Response to Question from ALJ Sainsot

In response to questions from ALJ Sainsot, Mr. Quattrocchi clarified that he was the property manager for Vanguard from 2005 to 2007 and then returned in 2009. Tr. at 111. He admitted that he was not the property manager from 2007 to 2009. Tr. at 111.

C. TESTIMONY OF CHARLES PRETTYMAN

1. Direct Testimony

As an initial matter, King's Walk designated Mr. Prettyman as its expert witness in this matter and submitted a list of nine opinions that Mr. Prettyman had formed in connection with this case. ComEd filed a Motion *in Limine* relating to eight of these opinions, and the ALJ struck four of them leaving the following four opinions alive for the evidentiary hearing (as they appear in King's Walk disclosure):

#83 Starting in 1996 ComEd, at various time, submitted incorrect bills resulting in billing errors. Basis: review of bills submitted to petitioner. Reason: To verify errors were made in rates, rate application, and for amounts in excess of the applicable rate for petitioner.

#84 Petitioner paid the bills rendered by ComEd that were incorrect. Basis: review of bills indicating there was no history of unpaid balances. Reason: to identify that petitioner paid the bills in a timely manner.

#90 Petitioner is a unit owner's association for a condominium property and an all-electric customer and is entitled to all-electric residential rates for service.

Basis:Sec.16-103.1 (220 ILCS 5/16-103.1) Reason: his appears to be directed at clearing the ambiguity in previous interpretations of the available rates.

#98 Rate 6 was improperly applied to a residential account in 1996. Rate 6 was not even properly administered had the account actually been nonresidential in 1996. Watt-hour meters were no capable of recording demand use which was required for rate 6 accounts using in excess of 2,000 kilowatt-hours of energy in a billing period. Basis: The rate. Reason: There is no reason.

See generally, Tr. (Oct. 2, 2012). In connection with the pre-trial ruling on the Motion *in Limine*, ALJ Sainsot made clear that King's Walk would not be permitted to sandbag with anything new at the hearing the next day. *Id.* at 50.

At the evidentiary hearing before Mr. Prettyman took the witness stand, ComEd counsel sought a ruling that he would not be permitted to testify with regard to CABA Credits or the issue relating to billing on seven accounts rather than one. Tr. at 112. With regard to the CABA Credits, ALJ Sainsot ruled that Mr. Prettyman could provide the calculation, but not his opinion on the subject. Tr. at 116; *see also* Tr. at 121-122 ("I think we can allow the Rider CABA credit -- allow testimony regarding that.") However, with regard to the issue relating to billing on multiple accounts, ALJ Sainsot ruled that Mr. Prettyman would not be permitted to testify on that subject. Tr. at 122-123.²

Mr. Prettyman testified regarding his background and his prior employment with ComEd. Tr. at 124-125. From 1993 to 2005, Mr. Prettyman served as president of Corporate Energy Consultants, Inc., a company that did rate and meter evaluation and prepared and prosecuted two to three hundred claims against ComEd or other utilities. Tr. at 126-128. Mr. Prettyman stated that he did not look at compliance with state laws. Tr. at 129. Beginning in 2005, Mr. Prettyman worked for Perfect Parts, a company having nothing to do with the utility business. Tr. at 129.

² While the Transcript indicates that Mr. Prettyman *can* testify on the meter issue, the context of the ruling (and the actual events on the day of the hearing) make clear that this was a typographical error, one which ComEd sought to correct with its Motion to Correct the Transcript. This change is reflected in the Corrected Transcript filed on November 13, 2012.

He continued to do some consulting work but declined to get involved in matters involving vendors that were selling electric. Tr. at 130.

To prepare for the hearing, Mr. Prettyman reviewed a summary of King's Walk's bills. Tr. at 131. He asked to see a copy of the "service entrants request" and the contract, but he guessed they were not available. Tr. at 131. He also reviewed the complaint and its exhibits, various tariffs, and the bills themselves. Tr. at 132. He noted 33 changes in billing rates (on the seven accounts) over a six-year period. Tr. at 132. Mr. Prettyman later testified that the seven accounts had changed rates on 26 occasions, only 18 of which were inappropriate. Tr. at 157-158. Mr. Prettyman also visited King's Walk to confirm that it was an all-electric building. Tr. at 133. Despite Ms. Habeck's earlier testimony that King's Walk has 11 buildings, Mr. Prettyman testified that each building has a separate account – totaling seven. Tr. at 134. Mr. Prettyman did not prepare, but rather was provided with a spreadsheet that purported to summarize the King's Walk electric bills. Tr. at 133-134. To confirm its accuracy, he matched a few "randomly." Tr. at 134. Mr. Prettyman confirmed that the rate that King's Walk was on (Rate 14 residential heat multiple without demand) prior to January 2, 2007 was correct. Tr. at 135-136. Going back to May of 2006 (a time barred by the Interim Order), Mr. Prettyman testified that Rate 6 (a rate not at issue in this case, *see* Tr. (March 20, 2012) at 31-32), would have been higher than Rate 14, and that it was not appropriate to bill King's Walk at this rate. Tr. at 136-137.

Mr. Prettyman testified that the commercial blended watt hour without space heat and in lieu of demand rate for account number 32012 on January 2, 2007 was not appropriate "[b]ecause the facility is still an all electric residential and this is applicable to a commercial account." Tr. at 138-139. He indicated that this would have been more expensive. Tr. at 140.

With regard to the account 17010 which was on residential blended space heat multiple with no demands, Mr. Prettyman was asked whether this was appropriate. He indicated “Yes and no.” Tr. at 141. He indicated that [Rate] BES-R was the residential basic electric with space heat and those charges are lower than ComEd’s commercial blended rates. Tr. at 143.

When asked whether the account ending 0014 was appropriately on residential space heat multiple rate 14 as of December 18, 2006, he indicated that this was appropriate. Tr. at 144. However, he took issue with the rate charged for the time period between April 20, 2007 and May 19, 2007 because it was a higher commercial rate. Tr. at 146; 152-153. Mr. Prettyman opined that the account should have been charged at the lower residential electric space heating rate. Tr. at 154.

Mr. Prettyman then examined Rate BES-NRB and opined that this rate is applicable to commercial accounts. Tr. at 147. When asked whether he had any understanding as to whether or not a condominium common area would be classified or permitted to be classified as nonresidential retail, Mr. Prettyman testified “I don’t recall anything about that and there was some confusion how this was structured...”. Tr. at 148. Yet, Mr. Prettyman then opined that King’s Walk would be in the residential electric space heating customer subgroup. Tr. at 150.

Presented with 220 ILCS 5/16-103.1, Mr. Prettyman testified about his understanding of the statute and how it required the utility to return condominium associations to the rate at which they were prior to deregulation. Tr. at 150-152.

Mr. Prettyman then looked at another account ending in 017 and opined that it was on an inappropriate rate at some point and that it then changed. Tr. at 155-156. After providing the above opinions on selected accounts for specific time frames, Mr. Prettyman declined to examine the other accounts and time periods instead noting, “I have to look at all of them to see if it was

the same thing for every one of them. I don't have that off the top of my head...". Tr. at 155. With that, Mr. Prettyman looked at one more account ending in 018 he opined that the nonresidential electric space heating customer subgroup was inappropriate. Tr. at 159-161.

Mr. Prettyman then examined a calculation of the CABA Credits prepared by counsel for King's Walk's office. Tr. at 162-163, 171. In response to questions from ALJ Sainsot, Mr. Prettyman testified that he did not prepare the document or even select which interest figures would be appropriate. Tr. at 164-165. He then expressed confusion as to whether the document reflected what was paid. Tr. at 166. The document was admitted into evidence as King's Walk Exhibit 2.0, although it was made clear that to the extent this document reflected anything about multiple meters, it was not being admitted for that purpose. Tr. at 168. Mr. Prettyman opined that CABA Credits were compensation for all electric residential customers who would experience rate increases greater than 24%. Tr. at 172. Counsel acknowledged that ComEd had credited \$5,053 to King's Walk, and asked Mr. Prettyman how much in CABA Credits were then due. Tr. at 174. Mr. Prettyman refused to stipulate to the exact dollars and cents. Tr. at 174. Mr. Prettyman then disagreed with King's Walk's counsel and testified that ComEd had paid King's Walk \$6,261 in CABA Credits. Tr. at 175. The spreadsheet relating to CABA Credits was received into evidence as King's Walk Exhibit 6.0. Tr. at 178.

Rate BES-R and Rate BES-NRB were moved into evidence as King's Walk Exhibits 3.0 and 4.0, respectively. Tr. at 168-169. The large summary spreadsheet titled "CHARGES on all 7 ComEd Accounts" was admitted as King's Walk Exhibit 5.0. Tr. at 169.

2. Cross-Examination Testimony

Mr. Prettyman testified that he was being compensated at an hourly rate of \$100 based on a handshake agreement. Tr. at 181. He had heard that the Commission had barred certain of

King's Walk's claims and admitted that he was only looking at the time period after July 20, 2006. Tr. at 182-183. Mr. Prettyman acknowledged that ComEd gave King's Walk a credit for the time period it was on Rate 6 during 2005 and 2006. Tr. at 184. With regard to King's Walk Exhibit 5.0, Mr. Prettyman admitted that he did not know whether there had been cancellations and rebills that were not reflected on that document. Tr. at 185-186. He didn't get into any credits because of a "short window" of time to work in. Tr. at 186.

When asked about the purpose of the CABA Credits, Mr. Prettyman could not explain why certain customers would need to be compensated if their rates were not going to be reclassified. Tr. at 186. That rate increase that they might incur could stem from a rate reclassification. Mr. Prettyman acknowledged this. Tr. at 186 ("Whatever. Yeah."), 187. With regard to whether they could be reclassified, Mr. Prettyman testified, "walks like a duck, quacks like a duck, it's a duck." Tr. at 187.

With regard to the King's Walk CABA Credit calculations reflected on Exhibit 6.0, Mr. Prettyman conceded that selection of the 4% interest rate was not his own. Tr. at 187. In going over the calculations, he used average figures as opposed to actual figures because "I wasn't going to get in there." Tr. at 188. In fact, he recognized that he was "just going to get into the theory of it." Tr. at 189. He never performed his own calculation with regard to the CABA Credits. Tr. at 190 ("No, I just used this.").

Mr. Prettyman was then asked to review King's Walk Exhibit 2.0 which reflects \$42,238.95 in overpayments (in part as an additional \$6,137 relates to the multiple accounts issue). Tr. at 191. Mr. Prettyman made this very important admission – *he conceded that if you take the demand charges off of the bill, then you need to replace them with the applicable residential distribution charges.* Tr. at 191. He was unable to identify where on Exhibit 2.0 that

issue was accounted for, nor did he offer any evidence as to what effect that offset would have. Tr. at 192. Again, Mr. Prettyman viewed his role as “looking at theory as opposed to dollars and cents.” Tr. at 193. In fact, he stated that he wasn’t going to testify as to how much is owed because he doesn’t get into the mathematical calculations. Tr. at 193. He then expressly stated that with regard to the documents that he has looked at – those that make up the evidentiary record in this case – he is not sponsoring any of the calculations. Tr. at 194.

With regard to the number of rate classification changes, Mr. Prettyman confessed that he did not look at whether cancellations and/or rebills effectively nullified those changes. Tr. at 196. When asked whether any of the rate classification changes could have been necessitated by a statute or a tariff, Mr. Prettyman replied, “I don’t know.” Tr. at 198. Mr. Prettyman then contradicted himself when he testified that only one rate classification is appropriate for a given account (Tr. at 198), but that one rate classification is *more appropriate* for a given customer. Tr. at 199.

Mr. Prettyman testified that the theory of his testimony is based on his opinion that King’s Walk is entitled to a residential rate for service. Tr. at 200. He was not, however, familiar with the Commission’s order in ICC Docket No. 05-0159 which addressed reclassification of condominium associations or the rate case order in ICC Docket No. 10-0537. Tr. at 201. Mr. Prettyman then testified as to his understanding of Section 16-103.1 of the Public Utilities Act (the “Act”); he testified that it required the utility to “reinstate any residential all electric discount applicable to any Unit Owners’ Association that received such a discount on December 31, 2006.” Tr. at 209. Mr. Prettyman’s *curriculum vitae* was admitted as King’s Walk Exhibit 7.0.

V. SUMMARY OF RESPONDENT'S TESTIMONY AND EVIDENCE

A. TESTIMONY OF DAVID GERAGHTY

1. Direct Testimony

Mr. Geraghty is employed by ComEd as manager of the electric supplier services department. Tr. at 213. A ComEd employee for 32 years, Mr. Geraghty worked in the rate department as the rate administrator manager from 1999 to 2009. Tr. at 213. Mr. Geraghty was then admitted as an expert witness. Tr. at 217. Mr. Geraghty testified that in January 2007, ComEd changed its rate structure – a restructuring approved by the Commission in ICC Docket No. 05-0597. Tr. at 218-219. In the context of this restructuring, Mr. Geraghty testified that Rate 14 was eliminated as of January 2, 2007, and the customers that were on that rate – condominium building unit accounts – were transferred to a commercial rate for delivery services as well as a commercial supply rate. Tr. at 219-220. Mr. Geraghty testified that this was consistent with the Commission's order in ICC Docket No. 05-0597. Tr. at 220. Based on the size of the account, they were put on basic electric service nonresidential annual or basic electric service nonresidential blended. Tr. at 220. Mr. Geraghty testified that Rate 6 was also discontinued on January 2, 2007. Tr. at 221.

Mr. Geraghty then testified about Section 16-103.1 of the Act. Tr. at 221. That section required that condominium unit accounts would be billed on average at a rate less than or equal to the rates that customers on residential rates would pay. Tr. at 221. In order to fulfill this mandate, ComEd placed the customer on Rates BES-NRA or BES-NRB and also implemented the residential electric supply rate for buildings that were formerly on Rate 14. Tr. at 222. Mr. Geraghty testified that the residential space heat supply charge operates as a discount to make Rates BES-NRA and BES-NRB compliant with Section 16-103.1 of the Act. Tr. at 222. He

indicated that these rates were applied to King's Walk's accounts with the exception of two accounts that did not have the residential electric space heating rate applied to them. Tr. at 222.

Mr. Geraghty testified that Rider CABA was implemented around the same time as Section 16-103.1 to ensure that an all-electric customer would not pay more than 24% more than it would have on its former residential rate. Tr. at 223. When asked by ALJ Sainsot why ComEd didn't continue billing these accounts as residential, Mr. Geraghty testified that the order in ICC Docket No. 05-0597 had deemed these accounts commercial. Tr. at 224. Furthermore, the decision was made to put these accounts on a commercial rate to give them a better opportunity to shop for alternative suppliers since the market had not yet "opened up" to residential customers. Tr. at 224.

Mr. Geraghty explained how the accounts that were on Rate 14 were transferred over to commercial rates as required by law and how the commercial supply rate was then changed over to residential supply with the implementation of Section 16-103.1. Tr. at 225-226. Mr. Geraghty explained that in May 2008, Rates BES-NRA and BES-NRB were combined into a single rate, Rate BES. Tr. at 226. With regard to the spreadsheet prepared by Petitioner (King's Walk Exhibit 5.0), Mr. Geraghty testified that it did not reflect cancellation/rebills – or corrections that ComEd made – and was therefore inaccurate. Tr. at 227-228.

2. Cross-Examination Testimony

Mr. Geraghty testified that he examined some, but not all, of King's Walk's electric bills, and that he had not been to visit King's Walk. Tr. at 230. Mr. Geraghty testified that King's Walk had requested that they be on the residential space heating rate (Rate 14) prior to January 2, 2007. Tr. at 231. He testified that it was also proper for such an account to be on Rate 6 prior to January 2, 2007. Tr. at 232. Mr. Geraghty testified that ComEd applies the tariffs that are

currently in effect. Tr. at 233. Mr. Geraghty testified that ComEd had inadvertently left a residential blended space heating multiple rate on two of the King's Walk accounts after January 2, 2007. Tr. at 234-235. In one case it was for a period of about three weeks and for the other about six months. Tr. at 235. When asked whether the spreadsheet indicated more than those two accounts for periods longer than those Mr. Geraghty testified to, he indicated that the spreadsheet did not reflect corrections and that those accounts were re-billed on the commercial rate. Tr. at 236-237. Mr. Geraghty testified that he had confirmed this on ComEd's billing system. Tr. at 238.

Mr. Geraghty testified that King's Walk was only eligible for service under Rates BES-NRA or BES-NRB after January 2, 2007. Tr. at 240-241. Mr. Geraghty testified that as of January 1, 2007, King's Walk was a commercial customer, not a residential customer. Tr. at 242. Mr. Geraghty testified that King's Walk requested to go on Rate 14 prior to July 20, 2006, but he was unaware of requests for other changes. Tr. at 244. He indicated that he believed at least one of the accounts has moved away from ComEd to a different supplier at this time. Tr. at 245.

Mr. Geraghty stated that ComEd has a policy where customers can request to combine its accounts if they meet certain qualifications for combined billing. Tr. at 248. He testified that some customers have reasons for keeping separate accounts; a condominium building for example, may have ownership arrangements that mitigate in favor of maintaining separate billing. Tr. at 249. Importantly, Mr. Geraghty testified that it may or may not cost less to be under one account versus several. Tr. at 250. It all depends on the application of rental charges that the customer pays for facilities that serve the accounts as well as for the meters that serve the customer's accounts. Tr. at 250.

3. Re-Direct Testimony

Mr. Geraghty reviewed Rate BES-NRA and concurred that the supply charges only were lower for the residential electric space heating customer subgroup than the supply charge for nonresidential electric space heating customer subgroup in February of 2008. Tr. at 252. He pointed out, however, that this looks only at the supply charges. Tr. at 254. When asked about King's Walk accounts that remained on residential electric space heating, Mr. Geraghty testified that those accounts were cancelled and later rebilled with the customer being billed under the commercial delivery service rate as well as the commercial supply rate applicable to the size of the customer's load. Tr. at 254-257. Mr. Geraghty testified that ComEd implemented Section 16-103.1 by leaving qualifying multi-unit buildings on a commercial rate, but charging them the lower residential space heat supply charge. Tr. at 259. Mr. Geraghty then examined the bill from one of two accounts that had not been switched to the residential space heating supply charge. Tr. at 260-261.

In his testimony on re-direct, Mr. Geraghty explained how a customer's bill could be corrected through the issuance of a cancellation and rebill. Tr. at 262-266. Finally, he testified that it is not always financially advantageous for a customer to have combined billing. Tr. at 266. For example, by having seven accounts, King's Walk avoids meter rental charges on six of its accounts because customers are entitled to the first meter on each account without paying rental charges or facilities charges as they would if all meters were on a single account. Tr. at 266-267.

B. TESTIMONY OF JOHN LEICK

1. Direct Testimony

Mr. Leick testified that he is a senior rate administrator at ComEd. Tr. at 268. While at ComEd, he has worked in the customer service department, engineering department and retail rates department. Tr. at 268. Over Petitioner's objection, Mr. Leick was admitted as an expert witness. Tr. at 269-271. Mr. Leick testified that King's Walk has seven accounts that serve common areas that were once taking service under a residential rate in 2006 until they were transferred to a nonresidential rate in 2007. Tr. at 271.

Mr. Leick explained that Rider CABA provided for a one-time adjustment to customers like King's Walk's bills that were formerly taking service under a residential rate after being transferred to a nonresidential rate in 2007. Tr. at 272. He testified that Rider CABA provided a formula to ensure that the increase in charges from 2006 to 2007 did not exceed 24%. Tr. at 272. Mr. Leick testified regarding the CABA Credits provided to five of the King's Walk accounts and pointed to the bill images and line items reflecting the application of those CABA Credits. Tr. at 273. Mr. Leick then testified that two of the accounts were overlooked. Calculated in the same manner as the other five accounts, these calculations (which follow the Rider CABA formula) amount to an owed credit of \$1,830.86. Tr. at 274, 279. Mr. Leick testified as to the application of the formula. Tr. at 276. Documents relating to Rider CABA and the CABA Credits were admitted as ComEd Exhibit 1.0. Mr. Leick then reviewed King's Walk Exhibit 6.0 which reflected King's Walk's CABA Credit calculations. Tr. at 280. He explained that King's Walk did not follow the formula set forth in Rider CABA and specifically how it had failed to do so. Tr. at 280-282. Mr. Leick testified that this misapplication of the formula inflated the credits

and that the calculations in ComEd Exhibit 1.0 are the correct ones calculated using the same method ComEd used for all Rider CABA calculations. Tr. at 283.

Mr. Leick intended to testify regarding ComEd's compliance filings made pursuant to Section 16-103.1 of the Act. Tr. at 284. However, King's Walk's counsel contended that "[w]e haven't seen these documents." Tr. at 285. In fact, the documents were disclosed. Tr. at 285. Mr. Leick then testified as to his understanding as to the requirements of Section 16-103.1 of the Act. Tr. at 290. He testified that Section 16-103.1 of the Act requires ComEd to offer rates to nonresidential condominium properties that are not higher than residential rates and also to apply the residential space heating supply charges to these accounts. Tr. at 290-291. To ensure that the average rates provided to condominium common area accounts are less than residential rates, ComEd has identified approximately 7,000 such accounts. Tr. at 291. Then, each year in June or July, ComEd performs a calculation on the accounts that are still with ComEd supply to confirm that the nonresidential rates charged to those condominium accounts are still lower than the residential rates. Tr. at 291. He testified that each year since 2007, ComEd has confirmed that nonresidential rates are lower than the residential rates. Tr. at 291.

Mr. Leick then turned to ComEd Exhibit 1.0 (marked ComEd Ex. B Tab 3 in the header). Tr. at 294. By comparing the bill contained in ComEd Exhibit 1.0 to the summary document prepared by King's Walk (King's Walk Exhibit 5.0), Mr. Leick testified that the summary document did not accurately account for the CABA Credit reflected on the bill. Tr. at 297.

2. Cross-Examination Testimony

Mr. Leick explained how the Rider CABA Credits were calculated and agreed that the residential electric space heating customer subgroup charge is the same under Rate BES-R and BES-NRB. Tr. at 302-303. Mr. Leick testified that King's Walk was most likely placed on Rate

BES-NRB in 2007 within the first bill. Tr. at 305. In reviewing King's Walk Exhibit 5.0, Mr. Leick testified that this may not appear to be the case because the bills may have been issued incorrectly and then corrected at a later date. Tr. at 306. To confirm this, Mr. Leick performed an extraction from a database and concluded that they were billed as nonresidential for time periods that King's Walk Exhibit 5.0 showed as residential. Tr. at 306.

Mr. Leick then again explained that the ComEd CABA calculations for the two overlooked accounts were made in the manner called for by the tariff, not necessarily how the account billed. Tr. at 311. He testified that ComEd has not credited the CABA Credit of \$1,830.86 because this matter is in litigation. Tr. at 312. He reiterated that he objected to King's Walk's calculation of the CABA Credits because it does not abide by the tariff. Tr. at 313-314.

3. Response to Questions from ALJ Sainsot

In response to ALJ Sainsot's questions, Mr. Leick confirmed that the two overlooked accounts are entitled to an adjustment for the application of the residential space heating supply charges in addition to the CABA Credits. Tr. at 315.

VI. ARGUMENT AND CONCLUSIONS

As evidenced by the ALJ's Interim Order and the evidentiary hearing in this matter, King's Walk is left with three grievances that cover only a limited period of time. First, it contends that it should be billed on one account. Second, King's Walk claims that it is entitled to Rider CABA Credits on all seven of its accounts. And third, King's Walk asserts that it was billed on the wrong rates though it fails to specify which accounts or during which time period. With regard to the third point, King's Walk's contention is legally unsound since ComEd properly abided by the Commission's orders and it properly implemented Section 16-103.1 of the Act.

A. BILLING KING'S WALK ON MULTIPLE ACCOUNTS

King's Walk has failed to prove by a preponderance of the evidence that it is entitled to any damages for being billed on seven accounts rather than combine billed on one account. In fact, King's Walk – the party with the burden – has provided *no* evidence on this issue. Neither of King's Walk's fact witnesses was able to point to any increased costs resulting from being served by seven accounts. Ms. Habeck indicated that she "became aware" that such an arrangement costs more, but she provided no evidence as to where she learned that, the basis for such a statement, and she could not quantify any amount. She could only point to Mr. Marshall Shifrin as the person who tried to consolidate the accounts. The problem is that Mr. Shifrin was not called as a witness at the evidentiary hearing (not to say that this is the type of evidence that would support any kind of claim in any event). Furthermore, ALJ Sainsot correctly ruled that King's Walk's expert, Mr. Prettyman, would be barred from presenting any evidence on this issue because he had not made any related disclosure prior to the hearing. Consequently, King's Walk's claim that it suffered some injury based on this billing methodology is wholly unsupported by any evidence and certainly does not rise to the level of satisfying Petitioner's claim. For this reason, this claim should be denied.

Even if the Commission were to find sufficient evidence on this point (and it is difficult to see how it could sustain such a finding), the actual evidence indicates that billing on seven accounts rather than one combined account could have worked to King's Walk's benefit. Only by comparing the avoided meter rental charges to other customer charges that potentially would be saved could the Commission determine which arrangement would be advantageous to King's Walk. What appears to be King's Walk's estimate on this issue appears on King's Walk Exhibit 2.0, and it estimates customer charges that could have been avoided at \$6,137.69. There is no

support for this figure nor did any witness provide any testimony relating to this computation. Furthermore, it does not consider the meter rental charges or distribution facilities rental charges that would be incurred if the accounts were consolidated. Without this analysis – and there is none in the record – certainly a claim of injury cannot be sustained. Consequently, this claim should be denied.

B. RIDER CABA CREDITS DUE TO KING’S WALK

Again, King’s Walk’s claim with regard to CABA Credits suffers from a serious lack of evidence. King’s Walk’s fact witnesses acknowledged that they were not even generally familiar with the claims nor did either one perform any calculation. This leaves Mr. Prettyman to carry the day for King’s Walk on this claim. First, the opinions disclosed by Mr. Prettyman contain no mention of CABA Credits, only a general mention of “billing errors.” At the hearing, ALJ Sainsot ruled that Mr. Prettyman could provide the calculation, but not his opinion on the subject. But Mr. Prettyman did just the opposite. He acknowledged that he had not prepared the calculation of CABA Credits King’s Walk claims it was due. He did not even select the interest figure used in the calculation.³ Rather than providing the calculation as permitted by ALJ Sainsot, Mr. Prettyman refused to stipulate to the dollars and cents reflected in King’s Walk’s computation. And, in strict non-compliance with the ruling, Mr. Prettyman testified that he was “just going to get into the theory of it.” Consequently, King’s Walk’s claim for CABA Credits suffers from a complete lack of evidence and should be denied.

In the event that the Commission does consider King’s Walk’s claim for CABA Credits despite King’s Walk’s failure to provide any evidence on the issue, the ComEd witnesses provided credible evidence that should determine the outcome of such claim. As Mr. Leick

³ Mr. Leick also provided substantial testimony relating to how King’s Walk had not properly applied the formula in Rider CABA.

explained the CABA Credit was intended to provide a one-time adjustment to customers such as King's Walk when they were transferred to nonresidential rate in 2007. The formula provided in Rider CABA ensured that the increase in charges would not exceed 24%, and there is nothing in the record to suggest that ComEd failed to faithfully apply the formula to five of the seven King's Walk accounts. With regard to the remaining two accounts, ComEd is willing to apply the credit of \$1,830.86 (as reflected in ComEd Exhibit 1.0) upon entry of such an order by the Commission resolving this entire dispute.

C. RATE ISSUES RECLASSIFICATION

It is undisputed that King's Walk's claim is limited to the time period after April 11, 2006. Furthermore, no witness takes any issue with the credit that ComEd issued to King's Walk for the period up to July 20, 2006. King's Walk's own calculation seeks a maximum recovery here of **\$54,181.84**.⁴ King's Walk Exhibit 2.0. However, numerous issues with both King's Walk's theory of its case and its calculations demonstrate that it is entitled to far less than that amount:

Failure of Proof. Much like its two other claims, King's Walk has failed to prove that the rates it was billed at were improper. Certainly its two fact witnesses presented no such evidence. Mr. Prettyman provided some evidence that would seemingly relate to such a claim, but the information he relied upon was not his own and was shown through the course of the hearing to be erroneous in many regards. The summary sheet that he relied upon did not take into account instances that ComEd corrected the billings and would have therefore mooted any claim by King's Walk. Furthermore, Mr. Prettyman did not adopt the summary sheet as his own,

⁴ Of that \$54,181.84, \$6,137.69 relates to "Total of all Customer Charges" which seemingly relate to the issue of whether King's Walk was billed on seven accounts or one combined account. For the reasons stated above (Section VI.A.), this claim cannot be sustained and should be denied and deducted from the total overcharges alleged by King's Walk. It should be noted that no witness provided any information or testimony to substantiate this figure.

while at the same time he failed to go through each account for the time period at issue to allow for a complete analysis of whether King's Walk was ever overcharged. This methodology ignores that King's Walk has the burden to show that it was overcharged and it cannot recover where evidence in the record is unsupported by any testimony. Finally, once again, King's Walk did not present a single witness to support its claim for \$54,181.84. Mr. Prettyman expressly testified that he was "looking at theory as opposed to dollars and cents." Tr. at 193. He stated that he was not going to testify as to how much is owed because he doesn't get into the mathematical calculations. Tr. at 193. Without any support for the amount of the alleged overcharges, and for the other reasons stated above, King's Walk's claim suffers from a lack of proof and its claim should be denied.

King's Walk was Properly Reclassified. King's Walk's claim for overcharges is entirely premised on its contention that it was entitled to be billed at a residential rate. King's Walk's evidence on this issue is shaky at best. Its expert, when asked whether a condominium common area could be classified as nonresidential testified, "I don't recall anything about that and there was some confusion how this was structured...". Tr. at 148. Ample authority exists, however, to support the billing reclassification and amounts billed to King's Walk by ComEd.

- The Commission's Order in ICC Docket No. 05-0159 (January 24, 2006) at 238 states the following:

The Commission approves the proposal to recategorize certain condominium customers as nonresidential for purposes of the Customer Supply Group definitions in Rider CPP. This recommendation is supported by the record and is reasonable.

- In ICC Docket No. 05-0597 (ComEd's rate case), the Order (July 26, 2006) at 8, addresses "Condominium Common Area Reclassification." The Order states the following:

No party objects to ComEd's proposed tariff revisions regarding the reclassification of certain condominium common area customer accounts from residential to nonresidential customers consistent with statements made by ComEd in Docket No. 05-0159. Therefore the Commission finds the changes to be appropriate and the revisions are hereby approved.

- The provision of the Public Utilities Act that relates to tariffed service to Unit Owners' Associations, 220 ILCS 5/16-103.1, provides in relevant part:

Tariffed service to Unit Owners' Associations. An electric utility that serves at least 2,000,000 customers must provide tariffed service to Unit Owners' Associations, as defined by Section 2 of the Condominium Property Act, for condominium properties that are not restricted to nonresidential use at rates that do not exceed on average the rates offered to residential customers on an annual basis.

ComEd witness, John Leick, testified that ComEd has complied with Section 16-103.1 of the Act each year since 2007 (when this section became effective). Importantly, Section 16-103.1 does not specify the rate at which these customers must receive service, only that it not exceed on average the rates offered to residential customers on an annual basis.⁵

Demand Charges/Residential Distribution Charges. Even King's Walk's own expert took serious issue with its calculation of purported damages associated with the rates at which it was billed. King's Walk Exhibit 2.0 shows total overcharges for all seven meters of \$42,238.95 (exclusive of customer charges and interest). These are the charges that King's Walk likely contends it incurred as a result of being on a nonresidential rate. Yet, Mr. Prettyman made a very important admission that could reduce this figure substantially. He testified that if you are going to remove these demand charges from the bill, then you need to offset those with the applicable residential distribution charges. He did not testify as to what impact that would have,

⁵ It cannot be disputed that – even with discovery at its disposal for years – King's Walk made no effort to gather and present any evidence as to whether ComEd has complied with Section 16-103.1. Certainly Mr. Prettyman does not anywhere contend that ComEd has charged "rates that do not exceed on average the rates offered to residential customers on an annual basis."

nor did King's Walk's counsel ask any ComEd witness what effect that would have, leaving the Commission to guess and only to know that the figure is something less than \$42,238.95. Again, this is a failure of proof, and failing to take this important offset into account would inflate the amount of any purported overcharge.

Interest Rate. Of the \$54,181.84 King's Walk claims it is due, \$5,805.20 of this amount is for interest calculated at 4.00%. No witness supported this figure, nor is there any evidence in the record that 4.00% is in any way the proper rate to use.

* * * * *

For the all of the foregoing reasons, ComEd requests an order denying relief to King's Walk other than the application of the CABA Credits, as determined by Mr. Leick, and the application of the residential space heating supply charges for the two overlooked accounts, plus the Commission-approved interest rates from 2007 to present for such adjustments.

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Respectfully submitted,
Commonwealth Edison Company

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