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I. INTRODUCTION

Throughout this proceeding, King's Walk has repeatedly demonstrated that since prior to 2007 it was inappropriately overcharged at inapplicable commercial rates, that it received incorrect credits under Rider CABA, and that it was excessively charged through the inappropriate use of multiple meters and accounts. Despite efforts to prevent an adjudication of the merits on this issue, Commonwealth Edison Company ("ComEd") has failed to provide a single shred of substantive evidence to refute King's Walk's claims. ComEd's own electric bills, which have been filed with the Commission in this docket, plainly show that, since 2007, ComEd has failed to charge King's Walk the correct, lower residential electric space heating supply charges—charges that ComEd itself admits should have been in place. Additionally, these bills disprove any of ComEd's disingenuous and unsupported conjectures that King's Walk was somehow issued credits or "rebillings" to correct these overcharges. Moreover, with the exception of calculations regarding the common area billing adjustment credits ("Rider CABA credits"), which were based on admittedly inaccurate assumptions, ComEd has not provided any analysis to dispute the amount of reparations King's Walk is due from this long and exhaustive process.

ComEd's Initial Brief consists mainly of rote repetitions that King's Walk failed to present sufficient evidence to meet its burden of proof. But this argument is fraught with outright distortions and misstatements of fact and law. Specifically, ComEd attempts to skew the express mandate of Section 103.1 of the Public Utilities Act, *see* 220 ILCS 5/16-103.1, and depict some authorization from the Commission to charge King's Walk, an all-electric residential space heating customer, with supply charges applicable to ComEd's commercial customers. *See* ComEd's Initial Br., 26-28, Nov. 27, 2012. Additionally, ComEd provides no reason why the Commission should accept its Rider CABA calculations in view of the admitted fact that

ComEd's calculations were based on incorrect supply charges for both 2006 and 2007. *See id.* at 24-25; *see also* Trial Tr., 305:7-12, Oct. 3, 2012. Moreover, without any foundation or facts, ComEd suggests that billing on several separate accounts and incurring multiple redundant charges could somehow have worked to King's Walk's benefits. *See* ComEd's Initial Br. 23. Finally, despite a clear order from the Administrative Law Judge ("ALJ") sustaining King's Walk's objections to testimony concerning ComEd's purported rebills, *see* Trial Tr. 239:11-240:16, ComEd's Initial Brief continually references mysterious, unspecified, and inadmissible "corrections" without any evidence that these corrections or rebillings even exist. *See* ComEd's Initial Br. 17-18, 24.

II. ARGUMENT

A. **ComEd's Liability in This Case Cannot Be Excused Because the Amounts Claimed by King's Walk Are "Insubstantial"**

ComEd first makes the cynical contention that "the amounts at issue in this case are not substantial," suggesting that King's Walk's claims are not worthy of consideration. ComEd's Initial Br. 3. However, as set forth in its Initial Brief, King's Walk is entitled to reparations estimated at \$53,430.53, plus interest thereon. *See* King's Walk Initial Br., 16, Nov. 27, 2012. This amount is in addition to its appealable claims for several hundred thousand dollars of overcharges prior to April 11, 2006. These amounts are in no way insubstantial to King's Walk, which is a condominium association consisting of hard-working citizens of ordinary means.

Moreover, there is absolutely no legal authority for ComEd to simply ignore legitimate claims that it deems "insubstantial," nor to subject its customers to years of litigation using ratepayer funding in an attempt to escape liability. Rather, Section 9-252 of the Public Utilities Act makes it explicit that where, as in this present case, the utility has charged an excessive or unjustly discriminatory amount for its service, the utility *must* make reparations to the

complainant, with interest at the legal rate. *See* 220 ILCS 5/9-252. Nowhere in the Public Utilities Act or in any fathomable source does the amount in controversy somehow forgive a public utility from liability. ComEd's condescending and patronizing implication cannot be used to excuse it from paying due reparations to King's Walk.

B. King's Walk Has Met Its Burden of Proof, While ComEd Erroneously Fails to Even Acknowledge Its Own Burden, Much Less Meet That Burden

As set forth in Section 10-15 of the Illinois Administrative Procedure Act, *see* 5 ILCS 100/10-15, the standard of proof in any contested case before the Commission is by a preponderance of the evidence. This preponderance of evidence requires the trier of fact to consider all of the evidence, pass on the credibility of witnesses, draw reasonable inferences from the testimony, and generally consider the weight and quality of the evidence. *Happel v. Mecklenburger*, 101 Ill. App. 3d 107, 111 (1st Dist. 1981). While ComEd is correct in noting that King's Walk bears the initial burden in this proceeding, *see* ComEd's Initial Br. 6, this analysis ignores the twofold nature of the burden of proof. There is both an initial burden of producing evidence, as well as the burden of persuading the trier of fact that certain facts are true. *Ambrose v. Thorntown Twp. Sch. Trs.*, 274 Ill. App. 3d 676, 680 (1st Dist. 1995). Once the burden of production has been satisfied, it shifts to the respondent to come forward with evidence refuting petitioner's claims. *See id.* If the respondent fails to produce any evidence refuting petitioner's *prima facie* case, then, under the preponderance of evidence standard, the trier of fact must decide in the petitioner's favor.

Additionally, because ComEd has asserted throughout this proceeding that, contrary to the allegations in the King's Walk's pleadings, it complied with orders of the Commission and with the Public Utilities Act (and that it somehow cancelled and rebilled King's Walk anytime it failed to do so), *see, e.g.*, Trial Tr. 286:-13-22; 239:8-10; *see also* ComEd's Initial Br. 2, ComEd

has the additional burden of proving this alleged compliance. When the respondent asserts facts constituting a defense which, by other affirmative matters, seeks to avoid the legal effect or defeat the cause of action set forth in the complaint, the respondent bears the burden of persuasion as to those facts. *Stanley v. Chastek*, 34 Ill. App. 2d 220, 229-230 (2d Dist. 1962) (citing 735 ILCS 5/2-613(d)). In this case, ComEd has repeatedly attempted to argue that the evidence shows that ComEd's rate switches "were done in accordance with tariffs and statute." ComEd's Initial Br. 2. Moreover, in its Initial Brief, ComEd continues to contend that there were instances where ComEd corrected billings, *see id.* at 25, but nowhere in evidence is there any actual proof of these rebillings. The facts asserted by ComEd throughout the trial constitute an affirmative defense (i.e., that it billed King's Walk correctly or otherwise corrected its billing errors), and thus require ComEd to persuade the trier of fact by a preponderance of evidence as to the veracity of these facts.¹ But mere conjecture without any proof should not be persuasive.

King's Walk has provided voluminous testimonial and documentary evidence, all of which is in the evidentiary record in this docket, in support of its claim that both establishes its *prima facie* case and carries its burden of persuasion. If the petitioner has, by a preponderance of all the evidence, carried these two burdens (i.e., of production and of persuasion), then the trier of fact must rule in petitioner's favor. *See Ambrose*, 274 Ill. App. 3d at 680. In the present case, the record has unrefuted testimony from King's Walk's longtime president and from King's Walk's property manager, showing that King's Walk never asked, authorized, or consented to be placed on inapplicable commercial rates. *See* Trial Tr. 75:11-17; 97:20-98:6. Additionally,

¹ While ComEd did not explicitly make these assertions as an affirmative defense, the allegations (i.e., compliance with statutory and regulatory obligations as a public utility) present an affirmative matter that requires ComEd to bear the burden of persuasion. Also, other public utilities have attempted—in vain—to make similar affirmative defenses. *See, e.g., N. Ill. Gas Co. v. Energy Coop.*, 122 Ill. App 3d 940, 958 (3d Dist. 1984) (ruling that the very existence of regulations do not provide some sort of excuse for a public utility to breach a contract).

King's Walk has shown that it never requested to be billed through seven separate accounts and, in fact, tried repeatedly to have its accounts consolidated to no avail. *See id.* at 78:2-4. Moreover, the testimony of King's Walk's expert witness, Charles Prettyman, who reviewed King's Walk's bills, the applicable tariffs, and even the premises themselves, established that:

- (1) There were 33 separate unauthorized billing rate changes to King's Walk's accounts since 2006, *see id.* at 132:15-17;
- (2) The higher commercial rates actually charged to King's Walk during this period were wrong, misapplied by ComEd, and generally inapplicable to King's Walk, *see id.* at 138:18-146:17;
- (3) Starting in January 2007, King's Walk should have been charged through the residential electric space heating subgroup provided in ComEd's rates, *see id.* at 142:18-143:5;
- (4) The rates of this residential electric space heating subgroup were substantially lower than the higher commercial rates actually levied upon King's Walk, *see id.* at 143:2-5; and
- (5) Under Section 16-103.1 of the Public Utilities Act, ComEd should have placed King's Walk, an all-electric residential customer, on the lower residential rate rather than the higher commercial rates, *see id.* at 150:7-152:3; and
- (6) The credits under Rider CABA prepared by ComEd were incorrectly calculated using residential subgroup supply charges rather than the nonresidential charges actually paid by King's Walk, *see id.* at 175:13-176:10.

Most compellingly, King's Walk's claims are proven by unassailable evidence in ComEd's own electric bills, which are all in the evidentiary record and have been summarized in accordance with Rule 1006 of the Illinois Rules of Evidence. *See King's Walk Trial Ex. 5.0; see also Ill. R. Evid. 1006.* The actual bills explicitly show the numerous, unauthorized switches to incorrect commercial rates, the misapplication of those rates,² and the multiple redundant charges

² Among other errors, the bills show that, without any explanation or authorization, ComEd charged King's Walk at various times after January 2, 2007, under numerous rates such as

incurred by King's Walk through its seven separate accounts. As these bills unequivocally indicate, since 2007, ComEd charged King's Walk not at the residential electric space heating customer supply subgroup provided in its own tariffs, but at the higher supply charges applicable to commercial subgroups. ComEd's own witnesses acknowledged at trial that the actual bills reflected the higher, nonresidential supply charges. *See* Trial Tr. 254:11-257:3, 308:18-310:3. These same witnesses further acknowledged that to comply with the requirements of Section 16-103.1, ComEd had to charge its residential all-electric condominium customers at the lower residential electric space heating customer supply charge. *See id.* at 298, 309-310; *see also* ComEd's Mot. for Summ. J., Ex. A, Dec. 22, 2011.

ComEd did not claim at trial that these bills somehow do not show that the actual rates and tariffs applied to and paid by King's Walk. Rather, ComEd attempts to suggest that King's Walk's "spreadsheet," which is presumably King's Walk Trial Exhibit 5.0, was in some unspecified way "jumbled" and showed "inaccurate information relating to billings," *see* ComEd's Initial Br. 3-4, despite the fact that Exhibit 5.0 merely comprises actual charges, usage data, and other items directly from ComEd-issued bills, and is in congruence with the Illinois Rules of Evidence, which allow for voluminous writings that cannot conveniently be examined to be presented in the form of a chart, summary, or calculation. Ill. R. Evid. 1006. ComEd can in no way attempt to argue that the bills issued to King's Walk during the relevant time period (totaling more than 500 individual bills) were either not voluminous or could be conveniently examined. Moreover, ComEd previously stipulated to the admission of this summary, made no objection to its admission as a trial exhibit, and offered no facts to rebut the summary's accuracy. *See* Trial Tr. 169:15-170:7.

commercial blended *without* space heating, *see* Trial Tr. 138:7-11, residential blended space heat multiple, *see id.* at 140:22-141:3, and commercial blended 0 to 100 kilowatts, *see id.* at 146:8-17.

ComEd's only potential argument against the veracity of Exhibit 5.0 seems to rely on evidence nowhere in the record and expressly denied at trial. *See* Trial Tr. 239:11-240:16. ComEd disingenuously attempts to argue that any claims by King's Walk should be "mooted" by the "instances that ComEd corrected the billings." ComEd's Initial Br. 25. However, despite having more than four years to do so, ComEd has never produced these purported "canceled" or "rebilled" bills. *See* Trial Tr. 238-40. These baseless allegations, completely unsupported by the evidence, constitute an affirmative set of facts that ComEd must bear the burden of proving. *See Stanley*, 34 Ill. App. 2d at 229-230. This burden requires ComEd to produce facts and to persuade the trier of fact by a preponderance of the evidence. ComEd has not produced any evidence that King's Walk was rebilled or reclassified, which would have been specifically reflected in the bills issued to King's Walk. *See* Trial Tr. 239:17-240:5. Because ComEd has failed to offer any proof as to these affirmative facts, the Commission cannot even entertain this attempted defense and must completely ignore any testimony or arguments about rebillings.

C. ComEd's Arguments that King's Walk was Properly Reclassified and Billed are Unavailing as a Matter of Law

ComEd's surprisingly terse rebuttal to King's Walk's principal claim (i.e., overcharges incident to ComEd's misapplication of its tariffs and charges) amounts to nothing more than a rote conclusion that the Commission in previous dockets somehow allowed this reclassification. *See* ComEd's Initial Br. 26-27. Not only has this specious argument already been rejected in this very docket, *see* Summ. J. Ruling, 2-3, March 6, 2012, nothing in the Commission orders cited authorizes ComEd to charge residential all-electric customers at rates higher than the residential electric space heating charges provided in ComEd's own tariffs. *See* Final Order, 238, *Commonwealth Edison Co.*, No. 05-0159 (Ill. Commerce Comm'n Jan. 24, 2006); Final Order, 8, *Commonwealth Edison Co.*, No. 05-0597 (Ill. Commerce Comm'n July 26, 2006).

More importantly to the case at issue, though, the General Assembly acted to mitigate against higher electric costs that these two 2006 orders may have levied upon electrically heated condominium customers when it passed Section 16-103.1 of the Public Utilities Act in 2007. Section 16-103.1 expressly requires utilities like ComEd to provide service to condominium customers like King's Walk at rates that do not exceed the rates offered to other electrically heated residential customers and to reinstate the previously provided all-electric discount. 220 ILCS 5/16-103.1. It has never been disputed that Section 16-103.1 properly applies to King's Walk, and it has never been disputed that King's Walk was receiving the residential all-electric discount (i.e., Rate 14) from ComEd on December 31, 2006. *See* King's Walk Trial Ex. 5.0; Trial Tr. 225:10-13.

ComEd's analysis in its Initial Brief completely ignores this statute's application and completely mischaracterizes the testimony from ComEd's own witnesses as to how the statute was implemented. *See* ComEd's Initial Br. 27; Trial Tr. 221:5-223:2, 298:6-299:1. Put simply, ComEd failed to apply the correct methodology in implementing Section 16-103.1 to King's Walk, resulting in the substantially higher bills, which is the central concept of this current controversy. At trial, ComEd's witnesses testified that ComEd complied with Section 16-103.1 by implementing tariffs designated as "commercial" rates, but providing within those tariffs a residential electric space heating customer subgroup supply charge, which was lower than the supply charge applicable to non-residential customer supply groups. *See* Trial Tr. 221:5-223:2, 298:6-299:1; *see also* ComEd's Mot. for Summ. J., Ex. A. Accordingly, ComEd's base electric service rates following the implementation of Section 16-103.1 (i.e., Rates BES-NRA and BES-NRB) provided for different supply groups with different supply charges, *see* King's Walk Trial Ex. 4.0; Trial Tr. 253:15-20, the lowest of which is for the residential electric space heating

customer subgroup. *See* Trial Tr. 254:7-10. In 2008, these two rates were merged into a single, currently prevailing tariff, Rate BES. *See* Trial Tr. 226. Rate BES continues to provide for different supply charges for the different customer subgroups—again with the residential electric space heating customer supply charge being substantially lower. *See* Commonwealth Edison Co., *Schedule of Rates for Electric Svc.*, 19-28 (June 20, 2012).

Plainly stated, in this case, ComEd did not charge King’s Walk under the appropriate residential electric space heating supply subgroup, resulting in significantly higher charges to King’s Walk’s seven accounts.³ The evidence in this case, which consists of the actual bills issued by ComEd and even ComEd’s own witnesses’ testimony, shows that ComEd incorrectly charged King’s Walk the higher nonresidential supply charge. *See* King’s Walk Tr. Ex. 5.0; Tr. Transcript at 254:19-22, 258:5-17, 308:18-310:3. In 2007, King’s Walk was not charged under the appropriate residential electric space heating customer subgroup. *See* King’s Walk Tr. Ex. 5.0. Once this subgroup was eliminated, King’s Walk was not charged under the appropriate residential electric space heating customer subgroup in Rate BES, instead it was charged in the higher commercial demand group. *See id.* ComEd continues to misbill and overcharge King’s Walk in these inappropriate categories to this day. *See* King’s Walk Trial Ex. 5.0. In view of these incontrovertible facts from the bills themselves, ComEd’s blanket and wholly unsupported assertion that “ample authority, however, exists to support the billing reclassification and amounts billed to King’s Walk,” is patently incredible. *See* ComEd’s Initial Br. 26.

Instead of actually looking to how King’s Walk was incorrectly billed, which is the issue of this case, ComEd merely concludes, without any evidentiary support, that it has complied with

³ As shown below, this misapplication of rates resulted in higher and redundant charges along all of King’s Walk’s separate accounts, significantly exacerbating the impacts of the ComEd’s errors.

Section 16-103.1. ComEd's Initial Br. 27. Inasmuch as ComEd sought to raise the factual defense that its billings were correct, as a matter of law, ComEd must produce and prove such factual defense by a preponderance of the evidence. *Stanley*, 34 Ill. App. 2d at 229-230. Instead, ComEd has provided no evidence that King's Walk was appropriately charged given the explicit mandate of Section 16-103.1. To the contrary, ComEd incorrectly argues that King's Walk should have made the "effort to gather and present any evidence as to whether ComEd has complied with Section 16-103.1," ComEd's Initial Br. 27 n.5, even though ComEd bears the burden of proving its own factual contentions.⁴ Thus, the Commission should dismiss any such argument that ComEd's alleged compliance with the statute somehow forgives, justifies, or excuses its actions with respect to King's Walk.

Furthermore, ComEd's own admissions show that it has not consistently and correctly billed King's Walk, wholly undermining ComEd's entire argument. ComEd explicitly admits that two of King's Walk's accounts were "overlooked" and that residential space heating charges should have been applied to these accounts. ComEd's Initial Br. 4, 28; *see also* Trial Tr. 306:10-12, 222:14-18; ComEd's Mot. for Summ. J., Ex. A. It is impossible to reconcile this fact with ComEd's unavailing argument that it properly applied its tariffs to King's Walk. More importantly, however, this admission shows that King's Walk should have had residential electric space heating charges applied to all seven of its accounts. ComEd failed to charge King's

⁴ Similarly, ComEd offers no evidentiary support for its confusing argument that it is entitled to some offset for unspecified "residential distribution charges." *See* ComEd's Initial Br. 27. ComEd argues that King's Walk expert witness did not testify as to the impact of such an offset, but the fact remains that ComEd's witnesses did not testify at all as to this offset and ComEd provided no evidence whatsoever as to how these may mitigate the amount owed by ComEd to King's Walk—and in fact demonstrates an admission to misbilling King's Walk. To the extent that ComEd claims it is entitled to some sort of offset or that its obligations were partially satisfied, it should have presented evidence at trial, or at least made some connection to the evidentiary record in its Initial Brief.

Walk under the correct customer subgroup and the misapplication of its own tariffs in light of its policies and the legislative mandate of Section 16-103.1 show that King's Walk was improperly overcharged under incorrect commercial rates and customer charges.

Again, ComEd's own bills, which were presented and admitted into evidence, inarguably show that from 2007 ComEd erroneously charged King's Walk the higher supply charges applicable to the commercial customer subgroups rather than the lower residential electric space heating supply charges mandated by Section 16-103.1. The evidence of ComEd's own bills make it inarguable that, in direct contravention of Section 16-013.1, ComEd did not charge King's Walk the lower residential electric space heating supply charge provided under its own tariffs, and therefore ComEd is liable to King's Walk for overcharges estimated at \$42,238.95, as argued in King's Walk's Initial Brief.

D. ComEd's Rider CABA Calculations Were Based on Admittedly Erroneous Assumptions and Should Be Disregarded

As discussed in King's Walk's Initial Brief, *see* King's Walk Initial Br. 12, ComEd expert witness Leick admitted that ComEd relied on incorrect assumptions and used the wrong supply charges in all of the Rider CABA calculations. *See* Trial Tr. 304:3-305:6. Therefore, his calculations of the Rider CABA credits are inherently wrong. Mr. Leick admitted, as does ComEd, that no CABA credits whatsoever were issued on two of King's Walk's accounts. *See* ComEd's Initial Br. 25; Trial Tr. 273:17-22. Again, if ComEd insists on raising the factual defense that they actually and correctly paid Rider CABA credits under the tariff (except for the two accounts, which they acknowledged are unpaid), ComEd accordingly bears the burden of proof to show by a preponderance of the evidence that it paid the correct CABA credits to King's Walk. *See Stanley*, 34 Ill. App. 2d at 229-230. Inasmuch as ComEd's own experts acknowledge

that they did not review the actual bills and used the wrong assumptions, *see* Trial Tr. 304:3-305:6, 230:5-15; 299:20-22, ComEd has manifestly failed to meet its burden of proof.

In contrast, King's Walk presented clear calculations of these unpaid Rider CABA credits, which are based on actual billing data using actual supply charges paid by King's Walk in 2006 and 2007. *See* King's Walk Ex. 6.0. ComEd does not—and cannot—dispute the veracity of King's Walk's Rider CABA calculations. Rather, ComEd appears to argue that the Commission should disregard King's Walk's Rider CABA claim because Mr. Prettyman, the witness who testified as to the CABA calculations, didn't prepare the calculations himself. *See* ComEd Initial Br. 24. Again, King's Walk's Rider CABA claims are based on the actual data from the actual electric bills, which are part of the record in this docket. As a matter of law, King's Walk's factual proof is more persuasive than ComEd's admittedly erroneous calculations, and King's walk has met its burden of proof as to its CABA claims.

E. Even Considering Potential Cost Increases, King's Walk Paid an Excessive Amount to ComEd Because It Was Erroneously Billed Through Multiple Accounts

ComEd must pay due reparations for improperly and excessively charging King's Walk through seven separate accounts. ComEd has never disputed that King's Walk met the criteria to have its several accounts combined onto a single account, *see* ComEd's Initial Br. 23, and ComEd's sole argument is that there is some possibility that these separate accounts could somehow have worked to King's Walk's advantage. *See id.* But the fact remains that since 2005 King's Walk has repeatedly requested, through telephone calls, letters, and even complaints at the Commission, to have its bills combined into a single account. *See* Trial Tr. 248:3-11. For unknown reasons, these requests were continuously ignored in direct contravention of ComEd's stated policy, and King's Walk continues to be improperly charged through multiple accounts. *See* ComEd's Initial Br. 18.

ComEd belabors the claim that “the actual evidence indicates that billing on seven accounts rather than one combined account could have worked to King’s Walk benefit.” *Id.* at 23. ComEd does not specify what this “actual evidence” is because, quite simply, none exists. Despite offering no evidence whatsoever to support this claim of benefit, ComEd callously attempts to once again rely solely on conjecture to dismiss this entire issue.⁵ However, even a casual reading of the actual bills, which are all in evidence and a part of the record, shows that each separate account was redundantly billed for Customer Charges, Standard Metering Charges, Supply Administrative Charges, and the Smart Meter Program. A spreadsheet of these charges, taken directly from the actual bills issued by ComEd and paid by King’s Walk, is included with this Reply Brief as Attachment A. This summary also includes a computation for the amount King’s Walk would have been charged had it been billed under a single account. However, because of the wide variance in charges assessed by ComEd during this time period (i.e., the reason behind this controversy), where charges for a particular billing cycle varied between accounts, an average was used to compute the amount for billing under a single account. In summary, from the period of August 2006 until present, as reflected in Attachment A:

- (1) King’s Walk incurred Customer Charges for every billing cycle on each separate account (i.e., 539 separate charges), totaling \$6,856.45. This would have been reduced to \$979.49—a savings of \$5,876.96;
- (2) Standard Metering Charges were assessed on each account for every billing cycle. These amount to charges of \$3,455.66, but should have been only \$493.67 (i.e., \$2,961.99 less);
- (3) ComEd charged Supply Administration Charges on 17 of the 77 billing cycles. These charges totaled \$15.67, but would have been lowered to \$2.24, which is a reduction \$13.43; and

⁵ Although ComEd belatedly raises for the first time a defense that it is entitled to some sort of offset or credit for potential savings due to distribution facilities rental charges, *see* ComEd’s Initial Br. 23-24, it failed to provide any evidence whatsoever of such offset or credit at trial. Accordingly, ComEd neither timely raised this defense nor did it meet its burden to prove such defense.

- (4) A charge for the Smart Meter Program, totaling \$70.00, was levied somewhat irregularly and sometimes negatively during 29 billing cycles. The total charge should have only been \$10.00 for one account, resulting in \$60.00 in savings to King's Walk.

See Attach. A.

ComEd is correct in noting that additional meter rental charges would be incurred if the accounts were consolidated, *see* ComEd's Initial Br. 24, and the analysis included in Attachment A considers this increased cost. At present, King's Walk has 18 total meters, 11 of which are leased and being paid for in addition to the Standard Metering Charges. If the accounts had been consolidated, King's Walk would have had to pay Meter Lease charges on 17 meters. Looking to the average rental fee per meter for each month (again, because ComEd's meter rental fees vary considerably), King's Walk would have paid an *additional* \$2,131.37 in Meter Lease charges from August 2006 to present, which is reflected in the total amount of charges that could have been avoided.

Had its bills been properly combined, King's Walk would not have been required to pay additional distribution facilities rental charges or other nonstandard facilities charges, however. *See* ComEd's Initial Br. 24. All of King's Walk accounts are served from community transformers, which are considered standard under ComEd's General Terms and Conditions. *See* Commonwealth Edison Co., *Schedule of Rates for Electric Svc.*, 163 (June 1, 2011). ComEd has disingenuously tried to claim that King's Walk would somehow receive these additional charges, but that simply is not allowed under ComEd's own Commission-approved tariffs.

Thus, the analysis reflected in Attachment A, using the data directly from the actual bills shows that ComEd must make due reparations to King's Walk for the amount of overcharges incurred because of billing through seven separate accounts. King's Walk was excessively charged for the services, *see* 220 ILCS 5/9-252, even accounting for the additional Meter Lease

fees, by a net total of \$6,781.02. *See* Attach. A. Additionally, King’s Walk continues to receive multiple bills, causing these excessive charges to increase with every billing cycle. Therefore, the Commission should order that ComEd combine King’s Walk’s multiple accounts into a single account, and make due reparations to King’s Walk in the amount of \$6,781.02 for solely these excessive costs, plus interest at the legal rate from the numerous payment dates. *See* 220 ILCS 5/9-252.

F. King’s Walk is Entitled to a Legal Rate of Interest on its Reparations

ComEd’s final contention is that no witness supported the claim for interest on the reparations owed by ComEd. *See* ComEd’s Initial Br. 28. Under Section 9-252 of the Public Utilities Act, where, as in the present case the utility has charged an excessive or unjustly discriminatory amount for its service, the Commission may order that the utility make due reparations to the complainant “with interest at the legal rate.” 220 ILCS 5/9-252. It is not disputed, and has even been properly found by the ALJ in this case, *see* Interim Order, 13, (July 7, 2011), that this controversy is appropriately governed by Section 9-252, where a utility is alleged to have made excessive or discriminatory charges by charging the wrong rate. *See* Interim Order, 13-14, July 7, 2011 (*citing Citizens Utils. Co. v. Ill. Commerce Comm’n*, 157 Ill. App. 3d 201 (1st Dist. 1987); *Village of Deerfield v. Commonwealth Edison Co.*, 399 Ill. App. 3d 84 (2d Dist. 2009)).

Because King’s Walk’s claims are governed by Section 9-252, the only reasonable interest rate would be “the legal rate” as prescribed in that section. This legal rate, as with all Commission authority, is statutorily based. *People ex rel. Hartigan v. Ill. Commerce Comm’n*, 202 Ill. App. 3d 917, 961 (1st Dist. 1990). The appropriate statute for the Commission to find this legal rate, then, is Section 2 of Illinois Interest Act. 815 ILCS 205/2. As the Court in *Hartigan* held, the “legal rate” of interest is 5 percent, as set forth for “settlement of accounts” in

the Interest Act. *Hartigan*, 202 Ill. App. 3d at 960-61. Therefore, King’s Walk is entitled to interest from the various dates of its numerous payments at a rate of 5 percent per annum.⁶

III. CONCLUSION

For the reasons set forth hereinabove and in King’s Walk’s Initial Brief, the Commission should order ComEd to pay reparations to King’s Walk in the principal amounts of:

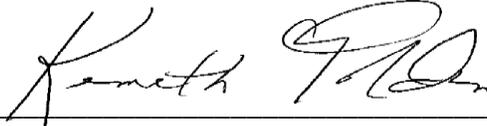
- (1) \$42,238.95 for improperly charging King’s Walk under inapplicable commercial rates, in contravention of Section 16.103.1;
- (2) \$5,053.89 for outstanding credits under Rider CABA still due King’s Walk; and
- (3) \$6,781.02 for excessive and redundant charges resulting from improperly billing King’s Walk through seven separate accounts.

In total, the Commission should order ComEd to make due reparation to King’s Walk in the principal amount of \$54,073.86, plus interest thereon at the legal rate of 5 percent from the date of King’s Walk’s excessive payments, together with such other relief such as attorney fees as the Commission deems just.

⁶ Section 9-252 is the only provision in the Public Utilities Act that references an interest rate “at the legal rate.” 220 ILCS 5/9-252. While Section 9-252.1 also refers to an interest rate, its language goes one step further, describing interest “at the legal rate *or* at a rate prescribed by rule of the Commission.” 220 ILCS 5/9-252.1. This latter reference to Commission rules would appear to be an allusion to Section 280.75 of Title 83 of the Illinois Administrative Code, *see* 83 Ill. Admin. Code 280.75, which would mandate an interest rate that would vary from year to year, as announced by the Commission in December of each year. *See, e.g., Order, Ill. Commerce Comm’n*, No. 05-0159 (Ill. Commerce Comm’n Dec. 20, 2006). The court in *Hartigan* properly made this differentiation as well. *Hartigan*, 202 Ill. App. 3d at 960.

Respectfully submitted,

KING'S WALK CONDOMINIUM ASSOCIATION

By:  _____

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January 11, 2013