

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

KING'S WALK CONDOMINIUM)	
)	
Petitioner,)	
)	
v.)	Docket No. 08-0264
)	
COMMONWEALTH EDISON COMPANY,)	
)	
Respondent.)	
)	
Complaint as to refund the balance of)	
overcharges/overpayments for electricity in)	
Rolling Meadows, Illinois)	

**COMMONWEALTH EDISON COMPANY'S OBJECTIONS TO KING'S WALK
CONDOMINIUM ASSOCIATION'S RESPONSE TO ADMINISTRATIVE LAW
JUDGE'S MARCH 11, 2013 RULING**

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Commonwealth Edison Company (“ComEd”) submits these objections to King’s Walk Condominium Association’s (“King’s Walk”) Response to Administrative Law Judge’s March 11, 2013 Ruling (the “March 21 Response”).¹ In total, King’s Walk contends that it was overbilled \$54,073.93 total for the years 2006 through 2012. King’s Walk bases this contention on three theories – each of which is wrong, unsupported by the evidence, and/or overstated.

First, there is no evidence in the record to support King’s Walk’s contention that it was overbilled because it has been billed on multiple accounts. And even if it was, there is no evidence or testimony to support the amounts attached to King’s Walk Reply Brief submitted

¹ ComEd interpreted the ALJ’s March 11 Ruling as a request for information pertaining to King’s Walk’s allegation that it was billed at the “wrong rate”; those are the alleged overbillings reflected in King’s Walk Exhibit 5.0. ComEd did not consider the ALJ’s March 11 Ruling as a request or an invitation for additional information relating to King’s Walk’s other two claims – that it should have been single-billed or for Rider CABA credits. Consistent with that understanding, ComEd will only summarize its positions on these two issues and stands upon the evidence (or lack thereof) on these issues and the positions expressed in ComEd’s Initial and Reply Briefs.

months after the evidentiary hearing. Second, ComEd has conceded that it owes King's Walk \$1,830.86 in Rider CABA credits. The amount set forth in King's Walk's March 21 Response – \$5,053.89 – is unsupported and overstated. Finally, and most germane to the ALJ's March 11 Ruling, with regard to King's Walk's contention that ComEd imposed inapplicable distribution facilities charges on it, this theory is flawed and the amounts are unsupported and overstated. Each issue is discussed in greater detail below.

I. Alleged Overcharges Based on Billing to Multiple Accounts²

As ComEd stated in its post-hearing briefs, King's Walk provided no evidence at the hearing to support its contention that it was overcharged as a result of not being single-billed. The only "evidence" that King's Walk relies upon is a document submitted as an attachment to its Reply Brief. These replies were exchanged simultaneously and ComEd had no opportunity to respond to any of the information in that document. Furthermore, this information was provided months after the evidentiary hearing and cannot replace a complete absence of evidence on this issue.

Furthermore, at the evidentiary hearing Ms. Habeck testified that all seven of King's Walk's accounts are with ComEd. Tr. at 91:1-12. ComEd has reviewed the seven King's Walk accounts and, as of early November 2012, account number 49936 93015 has been switched to an alternative Retail Electric Supplier. As a result of King's Walk switching that account to another supplier, ComEd would not be able to combine all of the King's Walk accounts because they must all be associated with the same supplier in order to place all of the accounts on a single bill.

² It is unclear why King's Walk refers to these alleged damages as "Multiple Meter Overcharges" because a discrepancy, if any, would stem from the number of bills, not the number of meters.

II. Rider CABA Credits Due to King's Walk

As ComEd stated in its post-hearing briefs, ComEd's evidence on the CABA credits was supported by Mr. Leick and properly applied the formula. That evidence established that ComEd owes King's Walk CABA credits amounting to \$1,830.86. *ComEd has agreed to credit that amount to King's Walk. See ComEd Initial Brief at 25.*

The "evidence" provided by King's Walk stands in stark contrast to ComEd's evidence. No witness provided any explanation of the calculations. In fact, two witnesses professed no knowledge of the calculations and the third witness was precluded from opining on the issue. *See ComEd Initial Brief at 24.* Additionally, ComEd's witness, Mr. Leick, challenged those calculations and explained why they are wrong. *Id.* at 24-25; ComEd Reply Brief at 7-8. The record provides no support for King's Walk's calculations and, accordingly, those proffered by ComEd should be adopted in the event any CABA credit is awarded. *See ComEd Exhibit 1.0.*

III. Alleged Distribution Facilities Overcharges

Commission Orders Make Clear that King's Walk was Properly Classified as Non-Residential. The very premise upon which King's Walk bases its claim relating to distribution charges is flawed. Any finding that King's Walk should have been classified as residential is entirely inconsistent with the Commission's orders in ICC Docket No. 05-0159 ("The Commission approves the proposal to recategorize certain condominium customers as nonresidential...") and ICC Docket No. 05-0597 (approving ComEd's proposed tariff revisions regarding the reclassification of certain condominium common area customer accounts from residential to nonresidential customers). Because King's Walk's theory relies on its flawed belief that it should have been classified as residential, ComEd objects to crediting King's Walk for the amounts in each of the "cells" identified in its March 21 Response.

Crediting King’s Walk for the “Distribution Facilities Overcharges” Would Result in a Windfall. If the Commission were to credit King’s Walk for the amounts contained in the cells listed in its March 21, 2013 Response, King’s Walk would be paying zero distribution facilities charges from 2006 through 2012. To wit, not a single customer in ComEd’s service territory completely avoids distribution services charges. And while ComEd does not believe that King’s Walk should be classified as residential (nor does the Commission, *see* Orders in ICC Dkt. Nos. 05-0159 & 05-0597, *infra*), it most certainly should not be the case that a customer avoids all distribution charges whether they are those charges applicable to a nonresidential customer or a residential customer. King’s Walk’s own expert acknowledges that King’s Walk would have to pay some amount in distribution charges:

MR. WIER: And would you agree, however, that if you’re going to take those demand charges off of the bill that you then need to offset those with the applicable residential distribution charges?

MR. PRETTYMAN: Yes, under the new rate structure.

Tr. at 191:15-20. Despite this concession, King’s Walk continues to overreach and urges a complete refund of these charges.

King’s Walk May be Entitled to Supply Charge Adjustments for 2 Accounts that were Overlooked, but it Fails to Raise that Issue in its March 21 Response. The only credit that King’s Walk may be entitled to stems from the fact that ComEd overlooked two of its accounts and did not issue them Rider CABA credits or switch them to the Residential Electric Space Heating supply charges beginning with the July 2007 monthly bills. Failure to switch these two accounts – 49936 90014 and 49936 93015 – would have no impact on the Distribution Facilities Charges. Rather, the supply charges for these accounts would be different. However, King’s Walk Exhibit 5.0 does not provide the supply charges paid on each account. Rather, it provides

adjustment to King’s Walk to the following cells of King’s Walk Exhibit 5.0 as reflected in the table below:

	Billed Amount	Corrected Amount	Credit Due to King’s Walk
Total Current Charges Account 49936 90014 (KW Ex. 5.0, cell CC108)	\$29,462.73	\$23,962.73	\$5,500
Total Current Charges Account 49936 93015 (KW Ex. 5.0, cell EO108)	\$8,392.84	\$6,792.84	\$1,600

As King’s Walk Exhibit 5.0 shows, the Distribution Facilities Charges and supply charges (as reflected in the “Total Current Charges”) were correctly calculated and billed for the remaining accounts.

King’s Walk Exhibit 5.0 Does Not Reflect Instances in Which ComEd Cancelled and Rebilled the Account to Correct any Errors. As a general matter, ComEd objects to the amounts reflected on King’s Walk Exhibit 5.0 because they do not reflect amounts that were cancelled and rebilled. A cancellation and rebilling of the account would have corrected any billing errors made by ComEd as a result of charging the customer the wrong rate or supply charge. The only witness with any knowledge of King’s Walk Exhibit 5.0 (Mr. Prettyman) testified that he did not account for any cancellations or re-bills that may have corrected amounts billed to King’s Walk. Tr. at 185:14-17; 196:6-10. In fact, he did not prepare King’s Walk Exhibit 5.0 nor did he “go into all the credits” because he didn’t have time. *Id.* at 185:18-186:6. Because King’s Walk Exhibit 5.0 was not prepared by any of the witnesses at the evidentiary hearing, and the one witness who testified about its contents distanced himself from its contents, ComEd was deprived of a meaningful opportunity to conduct a cross-examination relating to the figures presented therein. The only evidence in the record casts doubt on the accuracy of the figures presented in King’s Walk Exhibit 5.0. ComEd witness, Mr. Geraghty, testified that the

exhibit did not reflect cancelled and rebilled amounts. At the evidentiary hearing, the ALJ asked him whether the information reflected on King's Walk Exhibit 5.0 was accurate:

MR. GERAGHTY: The bills that were reissued are not reflected on the file that was listed here.

ALJ SAINCOT: So you're saying it's not accurate?

MR. GERAGHTY: This is not accurate.

Tr. at 228:6-11. Taken together, no King's Walk witness could vouch for the accuracy of the amounts reflected in King's Walk Exhibit 5.0 and ComEd witnesses cast considerable doubt on such amounts. Illinois law is clear: "The burden of proof regarding the correct measure of plaintiff's damages is on the plaintiff, not the defendant..." *First Nat'l Bank of Elgin v. Dusold*, 180 Ill. App. 3d 714, 718 (2nd Dist. 1989). Accordingly, damages should not be based upon King's Walk Exhibit 5.0 at all.

CONCLUSION

Based on the objections stated herein, and for the other reasons set forth in ComEd's Initial and Reply Briefs, King's Walk's relief (if any is awarded) should be limited to the following: (1) the CABA credits as calculated by ComEd, and (2) adjustments for the two accounts that were overlooked and not placed on the electric space heat supply rate. King's Walk is not entitled to relief as to its claim that it should have been combine billed to a single bill (because that amount is based on speculation and as the accounts exist today, ComEd could not combine bill King's Walk), nor is it entitled to be placed on a residential rate in contravention of Commission orders and ComEd's tariffs. Finally, King's Walk is not entitled to the relief that it seeks because it would have the effect of avoiding distribution facilities charges altogether – a benefit no other ComEd customer enjoys.

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Respectfully submitted,
Commonwealth Edison Company

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