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CHIEF CLERK'S OFFICE

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

No. 12-0111

**COMPLAINANT'S RESPONSE TO
RESPONDENT'S VERIFIED MOTION TO DISMISS**

In its Motion To Dismiss, ComEd correctly states that 401 North Wabash Venture LLC ("Venture") was required to submit a load letter which would estimate load demand or maximum level of electric power required to meet its needs. This is referred to as Maximum Kilowatts Delivered. ComEd also correctly describes that there are installed in buildings Standard Facilities and Non-Standard Facilities, which are referred to as Required Facilities. ComEd also correctly states that the customer pays for the Non-Standard Facilities and ComEd provides Standard Facilities as part of their obligation to provide service and its costs are credited toward the Non-Standard facilities.

The Facilities that are actually installed are determined by ComEd, and ComEd is required to use sound engineering practices to determine the equipment that is installed, and what makes up Standard Facilities and Non-Standard Facilities.

The gist of Venture's case is that ComEd failed to use sound engineering practices in determining what equipment was needed to satisfy the Standard Facilities and what properly constitutes Non-Standard. This resulted in the system being overbuilt from the beginning. In

addition, there are serious questions about the process used by ComEd to revise the Standard Facilities and Non-Standard Facilities.

For example, in response to Complainant's Request To Produce No. 1, which asked for documents related to ComEd's original determination of Required Facilities and Standard Facilities (a copy of which is attached as Exhibit 1), ComEd produced a spreadsheet that is believed to have been used in preparing the terms of the original NS Agreement. That spreadsheet was also utilized to calculate the new Standard and has a column labeled "CALC'D Peak by Transformer" which was derived from using the highest load figure from the "Transformer Load Summer" and "Transformer Load Winter" columns on the far right of the spreadsheet (Exhibit 2).

In response to Interrogatory No. 7 which asked for a description of the process involved in evaluating the usage leading up to the change in the NS contract, ComEd stated that it researched actual meter usage data and noting the Maximum Kilowatts Delivered in the previous 12 months. In response to Interrogatory No. 8 which asked for information regarding any analysis performed on the actual usage for Required Transformers Facilities, ComEd answered that total load was "6948 KVA at 480V and 2948 KVA at 208V" which totals 9896 KVA. ComEd also attached a spreadsheet used in compiling this data. The spreadsheet showed that actual usage was 7,743 KVA for the Summer and 9,896 KVA for the Winter. Thus, the usage figure used by ComEd in determining the new charges was based solely on Winter usage and ignored Summer usage. (Copies of Interrogatory Responses 7 and 8 and the spreadsheet are attached as Exhibits 3, 4 and 5.) If ComEd had used the highest figure of Winter or Summer as it had done in the past, the KVA usage would have been 11,080 KVA, which would have resulted in no change in the NS contract.

Unlike the method of calculation of the loads used to determine the original Standard and Non-Standard Facilities, ComEd simply used the “Winter (KVA)” for 480V and 208V, rather than take the highest KVA between Summer and Winter periods for each transformer line indicated on the Interrogatory (no transformer number or switchboard location was shown to verify the submitted data).

No explanation has been given for why in one case the highest of the Winter or Summer figures were used and in another case only the Winter figure was used. At a minimum, the methodology is inconsistent, and, at worst, it does not follow sound engineering practices.

ComEd also produced an analysis of kilowatts needed for heating and cooling Hotel Units and Residential Units (copies are attached as Exhibits 6 and 7). ComEd’s calculations show that 2 kw/sf are needed for summer loads, and 4.5 and 4.3 kw are needed for winter loads in the Residential and Hotel Units. Certain “Diversity Factors” were used to come up with these figures, but ComEd has not provided any information as to how the diversity factors were arrived at. Moreover, when a calculation is done to determine the KW delivered by the installed transformers, the amount of KW delivered range from 5.5 kw/sf to 7.7 kw/sf. Moreover, even this level of KW could have been adequately served by using 300 KVA transformers rather than the 500 KVA installed and 225 KVA transformers instead of the 300 KVA that were installed.

All of the foregoing demonstrates that there are serious questions about how ComEd determined the Standard Facilities in the first place and how they determined that the actual usage required less equipment. If less or smaller equipment was in fact needed in the first place, there is another serious issue as to how and why ComEd made the original determinations of the Standard equipment.

In addition, more information is needed to understand several key questions, including:

- (1) What column on the original spreadsheet was used to determine the new Standard Facilities of 10,000 kw; and if ComEd did not use the spreadsheet, what was used and a copy needs to be produced?
- (2) On the “Hotel Combo” and “Res Units” sheet of the Excel workbook, ComEd indicated various loads. What were the assumptions that created the connected loads?
- (3) Did the heating requirements come from ComEd or the design load letter?
- (4) How were the diversity factors arrived at, and why are they the same for hotel and residential when the usage of hotel and residential are quite different?

All of this leads to the inescapable conclusion that there are issues about whether ComEd used sound engineering practices in arriving at the original determination of Standard and Non-Standard Facilities and in making a change in those facilities in 2011. It also raises the question of whether the resulting rates and charges are just and reasonable as required by 220 ILCS 5/9-101 and whether the action taken by ComEd was nothing more than the implementation of a rate increase on a single customer outside of compliance with 220 ILCS 5/9-201 and 220 ILCS 59-102. Given these open issues and the need for more information, Venture has indeed stated a justiciable claim and it would be improper to dismiss this claim.

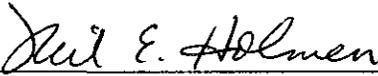
Venture also seeks to prevent ComEd from collecting alleged past due amounts that resulted from the negligence of ComEd. This is not a situation where ComEd failed to issue a bill, or charged the wrong rate. Venture was issued a bill, timely paid the bill and believed the amount paid was correct. The reason this occurred is all due to ComEd’s error in processing the bills. Venture had the right to rely on the billings received as being correct and to believe no

further billings were forthcoming. To allow ComEd to issue a 150% back charge due to its own error is unconscionable and should not be tolerated.

WHEREFORE, 401 NORTH WABASH VENTURE, LLC respectfully requests that ComEd's Motion To Dismiss be denied.

Respectfully submitted,

401 NORTH WABASH VENTURE, LLC

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **Complainant's Response To Respondent's Verified Motion To Dismiss** addressed to each of the parties indicated below in the manner indicated below on this 12th day of April, 2013:

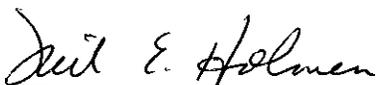
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