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2013 MAY - 11 A 10: 44

CHIEF CLERK'S OFFICE

401 North Wabash Venture, LLC :
-vs- : 12-0111
Commonwealth Edison Company :
Complaint as to billing/charges in :
Chicago, Illinois. :

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

Now comes the Respondent, Commonwealth Edison Company ("Respondent" or ("ComEd")), by and through one of its attorneys, Mark L. Goldstein, and files this Reply to Complainant's Response to Respondent's Verified Motion to Dismiss ("Complainant's Response").

Background

Complainant, 401 North Wabash Venture, LLC ("Complainant") filed Complainant's Response on April 15, 2013. While raising various questions regarding calculations made by ComEd and discovered by the Complainant, the Complainant has failed to show how its Verified Complaint is not deficient and should not be dismissed. Complainant's Response also raises various issues it perceives, but fails to set forth any facts in its Verified Complaint that leads to what it contends is a "justiciable claim."

As set forth in ComEd's Motion to Dismiss, the complaint must be dismissed because Complainant fails to allege any facts to support its conclusion that ComEd somehow violated a standard required by the Illinois Commerce Commission. Alternatively, ComEd maintains, as detailed in this Motion to Dismiss, that Rider NS governs this exact situation and defeats the complaint. Complainant's Response fails to discuss Rider NS and its applicability to the Verified Complaint. Additionally, the

Complainant's Response completely fails to respond to the Legal Standard section of ComEd's Motion to Dismiss. Rather than respond that the Complainant has pled facts in support of the essential elements of a cause of action (See: Gore v. Indiana Ins. Co., 376 Ill. App. 282, 285 (1st. Dis. 2007), Complainant's Response improperly raises the issue of "single issue ratemaking" citing 220 ILCS 9-202.

In the next succeeding section of this Reply, ComEd will generally reply to the allegations contained in the Complainant's Response.

Allegations and Replies

Complainant's Reply is simply an attempt to muddy the waters and disguise the reality that its complaint lacks well pled facts. Nonetheless, ComEd will address the Complainant's baseless allegations.

Allegation 1: ComEd failed to use sound engineering practices to determine the equipment that is installed and makes up Standard and Non-Standard Facilities and the system was overbuilt from the beginning.

Reply: ComEd utilized the load letters provided by the customer and worked with the Complainant's engineers to determine the facilities to install, based on customer needs. The Standard Facilities are hypothetical, based on the building load, served from a single vault at the base of the building. The Non-Standard facilities are what are actually installed in the building. The Standard Facilities were reviewed based on actual meter data to determine the demand for the entire building. All of the data was reviewed and signed by the customer and the customer had the opportunity, pre-construction to question the facilities being installed by ComEd. The Complainant signed ComEd's

Electric Service Facilities Agreement ("EFSA") (Attachment A) with Rider NS attached to it. Again, the facilities installed were based on the customer's load letters.

Allegation 2: ComEd used Exhibit 2 to determine Standard Facilities.

Reply: Exhibit 2 was not used to complete the audit and no facts suggest that it was. It was not used to determine Standard Facilities.

Allegation 3: ComEd used the highest figure of Winter or Summer individual transformer usage in the past to determine the new standard.

Reply: This is untrue. The Standard is based on the total building load at any point in time. Since the total Winter usage was higher for this customer, ComEd used the highest Winter usage to determine the new standard. The original standard was 16MVA. So claiming that "11,080 KVVA " Standard would result in no change in the Rider NS is untrue. Other similar allegations are also untrue. Sound engineering practices were followed as set forth above.

Allegation 4: Complainant questions where did the connected load and heating requirements come from?

Reply: The connected loads were given to ComEd by the customer in the load letters and the heating requirements came from the load letters as well as discussions with the customer's engineers.

Allegation 5: Complainant questions how the diversity factors were determined?

Reply: Again, ComEd worked with the customer's engineers to determine usage of the various building areas. Installations were installed based on the customer's estimates in the load letter. This included both the actual facilities installed and the monthly NS Rider rentals.

In summary, the customer provides the load letters wherein the customer projects what its electric needs are at the 401 North Wabash Building. Thereafter, ComEd and building engineers engage in a collaborative effort to finalize the electric service requirements for the customer. The Complainant's Response misuse of information received as part of the discovery process and set forth in the exhibits attached to the Complainant's Response is not a basis for raising non-issues in this complaint proceeding. The Complainant cannot complain that the sizing of the Non-Standard Facilities did not follow sound engineering principles when its own engineers and load letters determined the sizing of the Non-Standard Facilities at the building and the Complainant acknowledged those facilities in the attached EFSA.

Rider NS Has the Force and Effect of Law

Complainant questions whether ComEd's rates (NS) are just and reasonable as required by 220 ILCS 5/9-101 and whether ComEd violated the 220 ILCS 5/9-201 and 202 by applying those rates to a Complainant, a single customer. The Rider NS tariff sheet was provided to the Complainant along with the EFSA. Rider NS rates were approved by the Commission, Ill. C.C. No. 10, Original Sheet No. 277 and ComEd's General Terms and Conditions. Once the Commission approves the tariff, it is law, not a contract, and has the force and effect of a statute. (See: Adams v. Northern Illinois Gas Co., 211 Ill. 2d 32 (2004). Thus, the Complainant's raising of these statutory concerns are nothing more than "red Herrings" designed to confuse the record. This indirect attack on Rider NS is totally improper. The NS Rider rates are the law and ComEd followed them. The Commission rule, 83 Ill. Adm. Code 280.100 allows ComEd to back-bill the Complainant for the NS charges as it did.

Conclusion

The Complainant has failed to plead sufficient facts for which the Commission may grant it relief. The Complainant has wrongfully relied upon statutory authority that is inapplicable to this complaint. The Complainant has completely ignored its own load letter and signed EFSA requiring payment of the NS charges. The Complainant has ignored Rider NS, even though it was aware of it.

For these reasons and the other reasons set forth above, Commonwealth Edison Company respectfully requests that its Motion to Dismiss with Prejudice be granted and this complaint be dismissed with prejudice.

Respectfully submitted,
Commonwealth Edison Company

By: 
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CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2013, I served the foregoing Respondent's Reply to Complainant's Response to Respondent's Verified Motion to Dismiss, by causing a copy thereof, addressed to each of the parties indicated below in the manner indicted below:

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