

OFFICIAL FILE
ILLINOIS COMMERCE COMMISSION

STATE OF ILLINOIS
COMMERCE COMMISSION

ORIGINAL
ILLINOIS COMMERCE
COMMISSION

LAZ PARKING LTD, LLC,)
)
Petitioner,)
)
v.)
)
COMMONWEALTH EDISON COMPANY,)
)
Respondent.)

2013 JUN 10 1 A 10: 54

CHIEF CLERK'S OFFICE

Docket No. 12-0324

RESPONDENT'S MOTION TO DISMISS COMPLAINT
ON THE MERITS

Respondent, the Commonwealth Edison Company ("Respondent" or "ComEd"), comes through its attorneys, and respectfully moves the Illinois Commerce Commission ("Commission") to dismiss, with prejudice and on the merits, the formal complaint filed by LAZ Parking Ltd., LLC ("LAZ Parking" or "LAZ") on May 2, 2012. In support, Respondent states the following:

1. On May 2, 2012, LAZ Parking filed a formal five-count complaint with the Commission wherein it seeks to challenge the Respondent's back-billing for delivery service. LAZ alleges that ComEd's charges for unbilled delivery services are unjust, unreasonable and/or unlawful. (Complaint at 6). The sole and prominent premise underlying LAZ Parking's complaint, at counts I-V, is that its meter No. 141362866, was faulty. (Complaint at para. 6). In a different vein, count V of the Complaint alleges that a back-bill charge of \$ 36,625.07 was untimely under Section 280.100 of the Commission's rules.
2. In **Count I** of its complaint (paragraphs 33-36 and incorporating paragraphs 1-32) LAZ relies on Section 410.160 ("Initial Tests") of the Commission's metering rules to allege that ComEd "failed to perform an initial test of the Meter that would have shown its flagrant violation of the accuracy tolerances" mandated by Section 410.150 (b)(1)(A)-(D). (Complaint at para. 34). Further, Count I refers to and highlights one particular sentence in Section 410.200 (h)(1). No facts are pled in support of Count I.
3. In **Count II** of its complaint (paragraphs 37-39 and incorporating paragraphs 1-36), LAZ relies on Section 410.155 ("Installation Inspections") of the Commission's metering rules in an attempt to claim that ComEd "failed to perform a post-installation inspection of the Meter

within 90 days of its installation, which test would have shown the Meter's flagrant violation of the accuracy tolerances" mandated by Section 410.150 (b)(1)(A)-(D). No facts are pled in support of Count II.

4. In **Count III** of the complaint (paragraphs 40-42 and incorporating paragraphs 1-39), LAZ relies on Section 410.120(c) ("Metering Service Requirements") of the Commission's metering rules to claim - in the alternative - that if the Commission finds that ComEd did perform an initial test of the meter, then ComEd had knowledge that this meter was mechanically or electrically defective and yet installed it at LAZ's facility anyway. (Complaint at para. 41). No facts are pled in support of Count III.
5. In **Count IV** of the complaint (paragraphs 43-44 and incorporating paragraphs 1-42), LAZ emphasizes certain language in Section 410.200 (a) ("Corrections and Adjustments for Meter Error") of the Commission's metering rules. On this basis, LAZ alleges - in the alternative - that if the Commission finds ComEd to have performed a post-installation inspection, then ComEd had knowledge that the Meter was mechanically or electrically defective at such time, but did not notify LAZ of the alleged error and correction until October 28, 2010 (such that the 3-day "correction of the metering data" requirement in the rule was violated. (Complaint at para. 44). No facts are pled in support of Count IV.
6. In **Count V** of the complaint (paragraphs 45-46 and incorporating paragraphs 1-44), LAZ relies on Section 280.100 (a) ("Unbilled Service") to allege that it was not until October 28, 2012, that ComEd notified LAZ of a charge of \$36,625.07 that represented unbilled delivery service charges, and this charge was made "more than two years after the service was allegedly provided." (Complaint at para. 46). But, Exhibit C to the complaint shows a disconnect notice from ComEd that was dated September 20, 2010. (Complaint, Exhibit "C"). Moreover, paragraph 11 of the complaint acknowledges that LAZ did not know for what reason it received a disconnect notice in or about September, 2010 (wherein ComEd claimed that LAZ owed ComEd \$36,625.07). (Complaint at para. 11). Neither Exhibit C to the complaint nor paragraph 11 indicate that the charges complained of represent "unbilled" delivery service charges. Thus, to the extent that some facts are pled in Count V, these are confusing and contradicted by other facts.
7. All of the "meter testing" rules in counts I-IV above, are legitimate concerns when a meter is tested, found to be infirm, and a customer's billing is adjusted for this reason. *See* Section 410.200. These are the elements of law that inform what facts are to be pled. But, overall, these rules have no relevance or applicability to the facts and circumstances of the back-bill at issue where the "meter" itself was not the reason for the back-bill. Here, ComEd informed LAZ that an incorrect "meter constant" had been used by ComEd's billing system. (Complaint, Exhibit D). A "meter constant" is neither a part of nor a function of the meter. It is simply a calculation in ComEd's billing system that is derived from the characteristics of a piece of equipment, i.e., the current transformer or CT, associated with a transformer meter.

8. LAZ alleges, as fact, that “ComEd has claimed” that the Meter was installed with an incorrect meter constant “that caused the meter to register less electricity than the Account actually used.” (Complaint at para. 6). This assertion by LAZ appears to rest on paragraph 15 where LAZ states that correspondence it received from ComEd and dated October 28, 2010 (a copy of which is attached as Exhibit D to the complaint) indicates that ComEd installed the Meter with an incorrect meter constant. (See Complaint para. 6 and para. 15; Exhibit “D”).
9. Exhibit “D” to the complaint shows, however, that LAZ gravely misrepresents what ComEd actually wrote in its letter to the Complainant. True, ComEd did notify LAZ that it had been billed with an incorrect “meter constant.” (Complaint, Exhibit “D.”). And, ComEd further explained that this meant that LAZ had been “billed” for less electricity than LAZ actually used. (Id.). But, ComEd’s letter, said nothing about the meter registering less electricity than LAZ actually used. Hence, LAZ’s attempt at a factual allegation in paragraph 6 of the complaint is flawed and provides no support for any of the assertions of law in Counts I-IV. No other facts are plead.
10. Just as well, Count V of the complaint correctly sets out the rule for unbilled service, i.e., Section 280.100. 83 Ill. Adm. Code 280.100. But, LAZ did not owe ComEd \$36,625.07 for any “unbilled service.” These particular charges, for which ComEd did issue a disconnection notice on September 20, 2010, were for *regular* service billings that LAZ had not paid during the period of July 9, 2010 to September 1, 2010. (See Complaint, Exhibit “C”). There is an absence of facts to show otherwise.
11. Concurrent with the filing of the instant pleading, and in support thereof, ComEd is filing a Memorandum in Support of Respondent’s Motion to Dismiss the Complainant on the Merits (“Memorandum”).
12. The Memorandum will demonstrate to the Commission, in detail, that the LAZ complaint is fatally flawed in its entirety. This is so because LAZ has pled no facts (and there are no facts) to support its reliance on the Commission’s meter testing rules that apply only in situations where a meter is tested and found to be malfunctioning. 83 Ill. Adm. Code 410.
13. The Memorandum shows that Complainant fails to understand that there is a difference between a “billing” error (which falls under Section 280.100 of the Commission’s rules and governs in this situation) and “meter” error (which is defined and governed by the elements set out in Section 410.200 of the Commission’s rules). The difference is substantial and fatal to LAZ Parking’s complaint.
14. The Memorandum further brings to the Commission documents provided to LAZ in discovery and the Affidavits of ComEd employees which further enlighten the actual situation at hand and provide factual support for granting the Respondent Motion on all five counts of the complaint.

15. This Motion and the supporting Memorandum should be read together as one document. This pleading, as a whole, makes clear that It would be wasteful of the Commission's time and resources to engage this matter further.

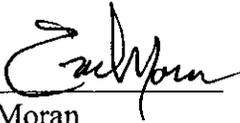
CONCLUSION

For the reasons above, and the reasons set out in Respondent's Memorandum in Support of its Motion To Dismiss the Complaint on its Merits, the Commonwealth Edison Company respectfully asks the Illinois Commerce Commission to grant its Motion and dismiss LAZ Parking's complaint with prejudice.

Respectfully submitted,

Commonwealth Edison Company

By:



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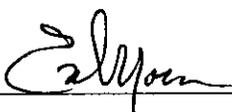
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NOTICE OF FILING

TO: Parties on Certificate of Service

PLEASE TAKE NOTICE that on June 7, 2013 I filed with the Chief Clerk of the Illinois Commerce Commission, the following: *Respondent's Motion To Dismiss Complaint On the Merits* and a copy of same is attached hereto, and hereby served upon you.



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CERTIFICATE OF SERVICE

I, Eve Moran, hereby certify that on June 7, 2013, I served a copy of the attached *Respondent's Motion To Dismiss Complaint On the Merits* in the above-captioned docket, by causing a copy thereof to be placed in the U.S. Mail, first class postage affixed, addressed to each of the parties below:



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