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STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

WRPV, XI SENECA CHICAGO, LLC
Petitioner

Docket No. 13-0060

vs.

COMMONWEALTH EDISON COMPANY
Respondent

**AMENDED PETITION AND
COMPLAINT**

COMES NOW WRPV, XI Seneca Chicago, LLC (hereinafter "the Seneca"), with this amended petition and complaint to the Illinois Commerce Commission (hereinafter "the Commission") against Commonwealth Edison Company ("ComEd" or "Respondent") for its interpretation of its rider by rejecting the installation of submeters in the Seneca's facilities. This petition and complaint state as follows:

1. The purpose of the submeters are to facilitate in the rebilling of electricity to residents of their multi-family building which, prior to their purchase, was being operated as a mixed-use residence and hotel. Grounds and justification for this petition are as follows:
2. In 1929, the building located at 200 E Chestnut Street, Chicago, IL 60611 ("Property") was built to be able to operate as an apartment community. At the time of construction, there was no requirement that each unit needed to be individually metered. As a result, the Property was issued a master-meter which covers all of the electric use in the community.

3. At the time of construction, the floor plan was not designed with the idea of having individual meters for each unit and as such, there is no central location able to house the standard meter, which is required for individual metering.

4. Current owners of the Seneca purchased the Property on March 1, 2012.

5. Upon purchasing the Property, the Seneca began pursuing efforts to transition the mixed-use residence and hotel into an exclusively multifamily apartment community. There have been minimal electrical requirements to modify the hotel for this purpose. Required changes included replacing flooring, light fixtures, cabinets, some appliances and switch-plates. The Seneca now wishes to pursue using submeters to rebill electricity to its residents. Respondent has determined that Petitioner is ineligible to do so.

6. Under 220 ILCS 5/2-101 and 220 ILCS 5/4-101, the Commission has authority to regulate and control the utility actions occurring in the State of Illinois, and whose acts have the same effect as an action by the Illinois General Assembly. *Alton Water Co. v. Illinois Commerce Comm'n*, 279 F. 869 (S.D. Ill. 1922). This would include approving and interpreting utility tariffs and to resolve disputes regarding the interpretation of said tariffs. In fact under the ruling in *Village of Niles v. City of Chicago*, 201 Ill. App. 3d 651 (1 Dist. 1990), it was determined that the Commission should take an active role in this process. As the authorization to rebill, or “resell,” is based on ILL. C.C. No. 10, Orig. Sheet No. 145, which is a part of ComEd’s active tariff, the Commission has jurisdiction to enforce the provisions contained therein. The Seneca should be permitted to submeter its residents and resell electricity based on the existing exemptions, and we respectfully request the Commission’s determination to resolve this issue.

7. Upon information and belief, the Seneca has been continuously redistributing electric power since the Property’s inception in 1929.

8. Under ComEd's tariffs, General Terms and Conditions, ILL. C.C. No. 10, Orig. Sheet No. 145, the resale of electric power is permitted "provided such resale **or redistribution** is only in a building for which such resale **or redistribution** is an uninterrupted continuation of resale or redistribution practices followed in accordance with previously applicable riders..." [emphasis added.] Redistribution is defined as "the furnishing of electric power and energy by a retail customer to third persons under circumstances that do not constitute resale." Orig. Sheet No. 145. Third person "means an occupant of a building to which a retail customer served hereunder resells or redistributes electric power and energy." *Id.*

9. The Seneca was built and has been in operation since 1929. During that time, the Seneca operated as either a multifamily dwelling or a mixed-use residence and hotel. During the most recent history, while operating as a hotel, roughly 30% of the units were rented out to long term customers. As a result, there have constantly been long-term tenants in the community since at least 1957. Under the resale rider, all that is required is that the customer must have been continuously engaging in Resale or Redistribution since 1977. While the Seneca has not been engaged in the Resale of electricity, it has been providing electricity to each of their long terms tenants, continuously since opening its doors, which meets the definition of Redistribution. As a result, the Seneca falls clearly within this exemption.

10. Furthermore, Public Policy favors allowing rebilling of electricity as a means of promoting conservation. Studies indicate that resale of electricity through submeters can result in conservation up to 26%. *New York State Energy Research and Development Authority, Residential Electric Submetering Manual, October 2001.* Moreover, a United States Environmental Protection Agency lead submetering study in 2004 showed conservation up to 24%. *National Multiple Family Submetering and Allocation Billing Program Study, 2004.* In

that study, the EPA echoed the sentiments of most states related to submetering when it stated that “Supporting the installation of submeters represents an opportunity for utilities to capture cost-effective savings.” The EPA also is encouraging state and local governments to promote submetering, not to prohibit it, as stated “State law should clearly establish the legal framework for all forms of multi-family billing systems.”

11. In October 2011, the National Science and Technology Council (NSTC) Committee on Technology¹ released the report *Submetering of Building Energy and Water Usage: Analysis and Recommendations of the Subcommittee on Buildings Technology Research and Development.*²

In their report they recommend that:

“Submetering information and feedback mechanisms should be tailored to intended users to effect operational and behavioral change in building operators and occupants. Information and feedback should be of an appropriate form and frequency and should focus on useful breakdowns of resource use; include historical data when appropriate to facilitate comparisons with past use; and, when possible, suggest specific actions that can be taken to reduce consumption.” (page x)

In analyzing this in more detail, the report further identified the following case study:

Case Study: For multi-family residential dwellings, the State of New York and its energy research arm, NYSERDA (New York State Energy Research and Development Authority), have been prolific in facilitating the implementation of submetering and accurately documenting energy-saving results. In late 2009, NYSERDA released an updated survey of their submetering case studies for multi-family residential buildings. This report confirmed their estimated savings of 18–26 percent through submetering using new and prior case studies on rent-stabilized apartments. (pg 10)

The NSTC further analyzes the value of providing consumption information to the residents of multi-tenant buildings in promoting conservation. In Appendix B of this same report, they infer

¹ The NSTC was created as an administrative agency to the White House by Executive Order on November 23, 1993. It is chaired by the President of the United States.

²

http://www.whitehouse.gov/sites/default/files/microsites/ostp/submetering_of_building_energy_and_water_usage.pdf

that by “increasing consumer’s awareness of their resource consumption patterns can lead to conservation.” (pg 47).

12. Given the research related to submetering as performed by the State of New York, the Environmental Protection Agency, and the White House NTSC, it is clear that the use of submetering would promote public policy goals related to energy conservation.

13. While we recognize that allowing rebilling of electricity by the community via submetering appears to limit customer choice, it would have no effect on the options currently available to residents at The Seneca. This building and its units are not equipped with separate meters, which would be necessary for customer choice.

14. Additionally, given the age of the building, installing individual meters for the provider would be cost prohibitive for an owner to undertake, with an estimated cost of over eight hundred and sixty thousand dollars to install, compared to less than a quarter of the cost to install accurate submetering devices, which are approved for use in such states as New York and California. As a result, due to the building’s current electrical configuration, all residents must use the electric provider that the community selects.

WHEREFORE, the Seneca prays that:

- A. The Commission find that Petitioner has been redistributing electricity to its residents.
- B. That Petitioner’s right to install submeters to resell to residents be confirmed. The applicable riders also provide details on how such resale shall take place, and which rules would be complied with prior to initiating any transition from redistribution to resale of electricity.
- C. Such other and further relief that is just and proper.

Dated this 17 Day of June, 2013.

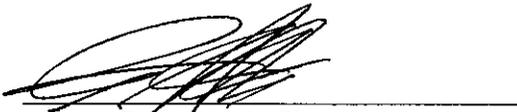
Sincerely,



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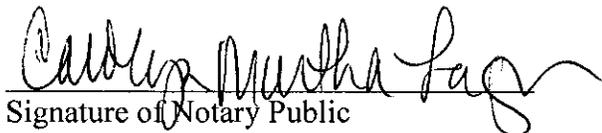
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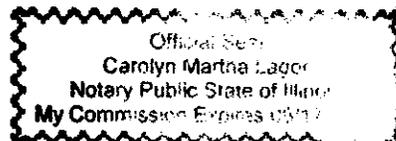
I Peter Vilim, Petitioner, first being duly sworn, say that I have read the above petition and know what it says. The contents of this petition are true to the best of my knowledge.



Petitioner's Signature

Subscribed and sworn/affirmed to before me on this 13 day of June, 2013.



Signature of Notary Public

NOTICE CERTIFICATE

A copy of this *Petitioner's Amended Petition* has been sent via U.S. Mail and/or email to Respondent through the following individuals:

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Signed this 17th Day of June 2013.



Brett M. Kraus
The Seneca