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STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

WRPV, XI SENECA CHICAGO, LLC
d/b/a The Seneca,

Petitioner

v.

COMMONWEALTH EDISON COMPANY,

Respondent

Docket No. 13-0060

PETITIONER'S REPLY IN SUPPORT OF
MOTION TO AMEND PETITION

COMES NOW WRPV, XI SENECA CHICAGO, LLC (hereinafter "the Seneca" or "Petitioner"), and submits this reply in support of its Motion to Amend Petition. In support of its reply, the Seneca states as follows:

Introduction

In its Response to Seneca's Motion to Amend Petition ("Response"), Commonwealth Edison Company ("ComEd") provides no legitimate reason why the Seneca should not be permitted to amend its petition originally filed on May 15, 2013. Contrary to ComEd's Response, Petitioner does not "create factual disputes" or contradict its previously made judicial admissions. It seeks to amend and supplement its petition, as provided by Illinois law, to clarify its position based on new information. As a general rule, courts exercise discretion liberally in favor of allowing amendments if doing so will further the ends of justice, and any doubts should

be resolved in favor of allowing amendments. *Cantrell v. Wendling* 249 Ill. App. 3d 1093, 1095 (1993). In this case, permitting Seneca's amendment will provide a clear background for the Commission to evaluate this matter and a broader context in which to consider the parties' various arguments.

SENECA'S AMENDED PETITION MAKES LEGITIMATE CLARIFICATIONS TO ITS
FACTUAL STATEMENTS

One of ComEd's main arguments in its response to Seneca's original petition is that Petitioner fails to state a claim. If the Commission finds that Petitioner failed in any respect to plead a claim with sufficient particularity, the proper result is to permit leave to amend. The examples that ComEd provides of Seneca's supposed contradictory factual contentions are not in fact contradictory at all. For example, ComEd points to Seneca's amended statements that the property was built in 1929 to operate as an apartment community, and that the property has operated as a multifamily dwelling and a mixed-use residence and hotel. Response at 3. ComEd then states "[i]n contrast to these statements, Seneca's original Verified Petition stated that 'Seneca recently purchased [the property], which had been operated as a hotel prior to our purchase. Upon purchasing this building, the Seneca began pursuing efforts to turn this hotel into a multifamily apartment community.'" Response at 3. New information learned by Seneca revealed that the property was originally *designed* to operate as an apartment community, with the inclusion of kitchens within each unit. The fact that it operated as a hotel just prior to Seneca's purchase does not contradict this amended statement. What Seneca also just learned was that even during the time that the property was being operated as a hotel, it was not *exclusively* a hotel, as it also served several long-term residents as a multifamily apartment community, since the building's inception. Seneca's plan was to convert the entirety of the building into a multifamily apartment community, and began making renovations to such end.

Another error in ComEd's Response is the contention that Seneca's original statement that the building has short-term residents contradicts the new information that long-term residents have also resided there since the building's inception. Response, at 3. The fact that the building has short-term residents was true at the time of the original petition. However, it has *also* maintained long-term residents that have comprised approximately 30% of the total occupancy throughout the building's history. This newly-learned information is directly relevant and on-point to the issue of redistribution, as the existence of these long-term residents supports a valid claim that redistribution has occurred - upon information and belief - since the property's inception in 1929. This information was not clear to Seneca when it filed the original petition, and the Commission should permit these vital amendments which support Seneca's claims. To the extent that the Commission finds that any of Seneca's new statements contradict any of its previously-filed facts, Seneca states that such contradictions are in fact the result of mistake and inadvertence, by virtue of just having learned this new information.

ComEd correctly points out that Seneca did not discuss the issue of continuous redistribution in its original petition. The reason for this omission is because Seneca did not have on hand the building's full history when it filed the petition, and therefore did not know that the building's history supported a claim of continuous redistribution, which it now knows. To date, Petitioner is still working on gathering relevant facts about the history of the premises. This property did not just come into existence last year. It was built 84 years ago, and has transferred ownership and undergone changes during this time. Since Seneca has owned the property for only one of the past 84 years, gathering pertinent facts has been and continues to be a lengthy process.

Conclusion

In its Response, Respondent ComEd fails to provide a valid reason that the Commission should deny Seneca's request to amend its pleading. The amendments stem from information that Seneca learned since filing the original petition, and the new factual statements in no way contradict or attempt to create factual disputes where none exist. The Seneca is able to properly plead that the property has continuously redistributed electric service to occupants and therefore qualifies for one of the limited exceptions to the rule on resale prohibition. Such facts, when taken on their face, must be accepted as true and taken in the light most favorable to Petitioner. As such, Petitioner respectfully requests that the Commission grant its petition to amend the petition.

Dated this 11th day of July, 2013.

Respectfully submitted,



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NOTICE CERTIFICATE

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

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Signed this 11th Day of July 2013.



Brett M. Kraus
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