

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

LAZ Parking LTD, LLC	)	
	)	
-vs-	)	
	)	
Commonwealth Edison Company	)	Docket No. 12-0324
	)	
Complaint pursuant to Sections 9-250 and 10-108	)	
of the Illinois Public Utilities Act and Section	)	
200.170 of the Rules of Practice of the Illinois	)	
Commerce Commission.	)	

**COMMONWEALTH EDISON COMPANY'S REPLY BRIEF**

**TABLE OF CONTENTS**

I. INTRODUCTION ..... 1

II. SECTION 410.200 IS INAPPLICABLE TO THIS CASE ..... 2

    A. Section 410.200 Is Applicable Only to Situations Involving Meter Error, Which Involves Over- or Under-Registration of Electricity Usage in Excess of 2% ..... 2

    B. The Evidence Shows That the LAZ Meter Did Not Experience Under-Registration of Electricity Usage in Any Amount, and Certainly Not at the 2% Level Required for Meter Error ..... 6

III. LAZ’S POSITION IGNORES CANONS OF STATUTORY INTERPRETATION AND WELL-SETTLED LEGAL PRINCIPLES..... 9

    A. In Support of Its Argument that ComEd Allegedly Failed to Perform a Post-Installation Inspection, LAZ Improperly Equates the Word “Inspection” with the Word “Test” ..... 9

    B. In Support of Its Argument that ComEd Allegedly Failed to Perform a Post-Installation Inspection, LAZ Misinterprets the Purpose of Post-Installation Inspections ..... 12

    C. In Support of Its Argument that ComEd’s Responses to LAZ’s Requests for Admission Were Inadequate, LAZ Ignores the Plain Language of Rule 216 and its Recent Amendment ..... 13

    D. LAZ Misrepresents the Law Regarding the Burden of Proof in this Case ..... 14

    E. LAZ Attempts to Institute a Rulemaking under the Guise of a Contested Case .. 15

IV. LAZ’S INITIAL BRIEF CONTAINS SEVERAL FACTUAL ERRORS ..... 17

    A. ComEd Witness Ms. Marisa Spitz Did Not Dispatch ComEd Witness Mr. Derrick Moore to the LAZ Facility ..... 17

    B. LAZ Mischaracterizes Ms. Spitz’s Testimony as “Indifferent” ..... 18

    C. The Total Amount of Unbilled Service at Issue in this Case is Not \$259,937.85..... 19

    D. ComEd Did Not Install the LAZ Meter with an Incorrect Constant..... 19

    E. ComEd Witness Mr. Rumsey Is Eminently Qualified to Opine on Issues Related to this Case..... 20

    F. ComEd’s Meter Constant Discrepancy Report is Part of its Billing Function, Not Its Meter Testing Procedures ..... 20

V. CONCLUSION..... 21

## I. INTRODUCTION

The Initial Brief of LAZ Parking LTD, LLC (“LAZ Initial Brief” or “LAZ’s Initial Brief”) is more notable for what it does not say than for what it does say. LAZ’s Initial Brief never claims that Meter No. 141362866 (“LAZ Meter”) experienced under-registration of electricity usage in any amount, let alone under-registration that rises to the level of meter error as defined by the Illinois Administrative Code sections applicable to the Illinois Commerce Commission (“Commission Regulations”). LAZ Parking LTD, LLC’s (“LAZ”) entire case, however, rests on a finding of under-registration or meter error.

To be clear: LAZ argues that Section 410.200 of the Commission Regulations is applicable to this case. Section 410.200 governs only “Corrections and Adjustments for Meter Error,” which involves corrections to metering data when a meter’s weighted average over or under-registration exceeds 2%, *i.e.*, registration less than 98% or greater than 102%. 83 Ill. Admin Code § 410.200. Further, section 410.200(h)(1) prohibits adjustments for *under-registration* when certain testing and accuracy requirements have not been met. 83 Ill. Admin. Code § 410.200(h)(1). LAZ argues that Section 410.200(h)(1) requires ComEd to refund the amounts LAZ paid for delivery of energy that LAZ undisputedly consumed because ComEd allegedly failed to meet those testing and accuracy requirements by not performing the type of post-installation inspection that LAZ recommends. *See, e.g.*, LAZ Init. Br. at 8.

But LAZ has not provided any evidence that the LAZ Meter under-registered electricity usage in any amount, let alone in excess of 2%. Indeed, the undisputed evidence in this case shows that at all times, the LAZ Meter was accurately registering LAZ’s energy usage. Therefore, LAZ’s entire argument that ComEd was prohibited from making an adjustment to LAZ’s bill because ComEd allegedly did not perform a post-installation inspection is not valid because 410.200(h)(1) prohibits adjustments only in cases where there is under-registration.

Section 410.200 generally, and subsection (h)(1) specifically – the Commission Regulation LAZ claims prohibits ComEd’s billing adjustment in this case – is therefore inapplicable and the Illinois Commerce Commission’s (“ICC” or “Commission”) only lawful course of action is to enter an order denying relief to LAZ and finding in favor of ComEd.

ComEd will also succinctly address the various other issues that LAZ’s Initial Brief presents, including basic errors in statutory interpretation, misapplication of well-settled legal principles, and several factual inaccuracies. All of these issues, however, are subordinate to the fact that the undisputed evidence shows that the LAZ Meter did not experience under-registration of electricity usage and certainly did not experience meter error.

## **II. SECTION 410.200 IS INAPPLICABLE TO THIS CASE**

### **A. Section 410.200 Is Applicable Only to Situations Involving Meter Error, Which Involves Over- or Under-Registration of Electricity Usage in Excess of 2%**

As explained in detail in ComEd’s Initial Brief, section 410.200 governs meter registration errors that rise to the level of meter error, and it contains specific testing and accuracy requirements for billing adjustments related to meter error. ComEd Init. Br. at 8-9; 83 Ill. Admin. Code § 410.200. As also explained in ComEd’s Initial Brief, a fully accurate meter registers the electricity flowing through it at 100%. ComEd Init. Br. at 1. As further explained in ComEd’s Initial Brief, meter error involves over or under-registration of electricity usage in excess of 2%. *Id.* at 7, 8-9. Therefore, in order to experience meter error, a meter must register less than 98% or greater than 102% of actual electricity flowing through it. *Id.* at 1-2, 7, 13, 15. LAZ’s position ignores this well-settled framework and seeks to apply the section 410.200 testing and accuracy requirements *without any evidence of any registration error, let alone meter error* as defined by the Commission Regulations.

LAZ essentially cherry picks from the Commission Regulations, ignoring those subsections of section 410.200 that would impede its recovery or expand the time period for ComEd's billing adjustment. This is improper. "Administrative regulations have the force and effect of law and are interpreted with the same canons as statutes." *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130 at ¶ 38, citing *Madigan v. Illinois Commerce Comm'n*, 231 Ill. 2d 370, 380 (2008). "Regulatory provisions, like statutory provisions, must be read in concert and harmonized." *Id.* at ¶ 50. LAZ's position reads section 410.200(h)(1) separate and apart from the remainder of the Commission Regulations.

In order to understand the multiple flaws in LAZ's position, it is helpful to look at the full text of section 410.200, as opposed to the single subsection that LAZ excerpts. See LAZ Init. Br. at 8. In its entirety, section 410.200 provides:

410.200. Corrections and Adjustments for *Meter Error*

- a) *Whenever any test made by any entity or by the Commission shows a meter to have an average error of more than 2%, a correction of the metering data shall be determined by the entity providing metering service and that correction shall be conveyed within 3 business days to the customer and to other entities involved in billing the customer.*
- b) When a meter is found to have an average error of more than 2%, the entity providing metering service shall determine the *metering data correction* using the actual percentage of error as determined by the test, not the difference between the allowable error and the error found as a result of a test.
- c) If the meter is found to run faster than allowable, the entity providing metering service shall determine the correction to the metering data for that meter. In determining the correction it shall be presumed, unless demonstrated otherwise, that the inaccuracy has existed for a period of 2 years. This period of presumed inaccuracy shall not exceed the time for which records of the current customer's usage exist.
- d) If the meter is found to be slower than allowable, the entity providing metering service shall determine the correction to the metering data for that meter. In determining the correction, it shall be presumed, unless demonstrated otherwise, that the inaccuracy has existed for a period of 1 year prior to the test for small

commercial and residential customers and 2 years prior to the test for all other customers.

e) In the case of a non-registering meter that has been read during the period of non-registration, the entity providing metering service shall not determine a correction to metering data for estimated consumption extending over more than twice the regular interval between readings.

f) *No corrections to metering data for meter error shall extend beyond the in-service date of the meter discovered to be in error, nor shall any correction be required to extend beyond the date upon which the current customer first occupied the premises at which the error is discovered.*

g) Whenever an entity or the Commission's representative finds that a service watt-hour meter, while in service, exhibits creep, the entity shall make an estimate of the registration caused by the creep during the period as specified under subsection (c) and shall make a corresponding correction in the metering data.

h) Billing adjustments

1) For electric utilities. Any correction to metering data for over-registration shall be accompanied by an adjustment to customer billing by any electric utility that rendered service that is affected during the period of adjustment. *Corrections made to metering data for under-registration may be accompanied by an adjustment to a customer's billing. However, if an electric utility is providing metering service, in no case shall an adjustment to a customer's billing be made for under-registration if all testing and accuracy requirements of this Part have not been met.*

2) For entities other than electric utilities. Any correction to metering data made by any entity other than an electric utility and all records relating to the adjustment of the customer's billing or charges shall be retained for at least 2 years.

i) Provisions of this Section do not apply to situations in which the customer's wires, meters or other service equipment have been tampered with and the customer enjoyed the benefit of the tampering.

83 Ill. Admin. Code § 410.200 (emphasis added).

Section 410.200 thus explains that meter error can occur when a meter is tested and found to be malfunctioning because it is running too fast (over-registering), too slow (under-registering), non-registering, or on analog meters exhibiting "creep" as that term is defined in the

Commission Regulations. Rumsey Dir., ComEd Ex. 1.0, 6:109-112; 83 Ill. Admin. Code §§ 410.200(c)-(e), (g). Section 410.200 then provides that meter error exists “whenever any test by any entity or by the Commission shows a meter to have an average error of more than 2%.” 83 Ill. Admin. Code § 410.200(a). *See also* § 410.200(b). Section 410.10 defines “average error” as “the difference between 100% and the average percent registration as defined in Section 410.150(d).” 83 Ill. Admin. Code § 410.10. Section 410.150(d) provides that the “average percent registration of a watt-hour meter shall be determined by adding the light load registration to 4 times the heavy load registration and dividing that quantity by 5.” 83 Ill. Admin. Code § 410.150(d). Section 410.150(e)(1)(A) applies the same standards to demand meters.

In this manner, the Commission Regulations narrowly and purposefully define meter error, and it is limited to whether electric usage registered in excess of the specified margin of error on the physical meter. After defining meter error, section 410.200 specifies that a utility must meet specific testing and accuracy requirements before adjusting a customer’s bill for *under-registration* due to meter error. 83 Ill. Admin. Code § 410.200(h)(1). Section 410.200 also provides that corrections to metering data due to meter error may extend back to the in-service date of the meter or the date the customer first occupied the premises at issue. 83 Ill. Admin. Code § 410.200(f).

In this case, however, LAZ seeks to apply the section 410.200(h)(1) testing and accuracy requirements without regard to the plain language of that subparagraph and without reference to the remainder of section 410.200, and thus *without any evidence of any under-registration, let alone under-registration rising to the level of meter error* as defined by the Commission Regulations. LAZ then inexplicably attempts to apply a different limitation period to the alleged corrections and adjustments for meter error than the one clearly articulated in section 410.200(f).

LAZ Init. Br. at 19 (applying the 2 year period in section 280.100, which governs billing errors, not meter errors).

LAZ apparently believes that every error – regardless of whether it involves under-registration or meter error – is subject to the testing and accuracy requirements in section 410.200(h)(1), but not the billing adjustment period in section 410.200(f). *Compare, e.g.,* LAZ Init. Br. at 3 (conflating section 410.200 accuracy requirements related to meter error with section 280.100 related to unbilled service); *and* 4 (conflating *unbilled* service with *unpaid* service); *with* LAZ Init. Br. at 4, 19 (applying 2 year period in section 280.100 to all amounts at issue in this case). The Commission should reject this outright. And as explained in the next section, LAZ’s position is also contrary to the evidence in this case.

**B. The Evidence Shows That the LAZ Meter Did Not Experience Under-Registration of Electricity Usage in Any Amount, and Certainly Not at the 2% Level Required for Meter Error**

The evidence shows that the test results for the LAZ Meter were: 100.01% in Heavy Load; 100.00% in Light Load; and 100.01% in Power Factor. Rumsey Dir., ComEd Ex. 1.0, 13:268-272; ComEd Ex. 1.06. This is well within both the 1% to 2% error allowed pursuant to the meter accuracy requirements in the Commission Regulations and the 2% meter error threshold for Section 410.200. 83 Ill. Admin. Code §§ 410.150(b), (d), (e); 410.200(a)-(b), (h). Therefore, the LAZ Meter did not experience under-registration in any amount and certainly did not experience under-registration rising to the level of meter error. Section 410.200 clearly does not apply.

Moreover, the evidence shows that the LAZ Meter accurately recorded the stepped-down usage flowing through the LAZ current transformers (“LAZ CTs”) to the LAZ Meter. Rumsey Dir., ComEd Ex. 1.0, 15:307-310. There was no over-registration, under-registration, non-registration, or creep. *Id.* The evidence further shows that the LAZ CTs were accurately

stepping down the usage flowing through the LAZ CTs to the LAZ Meter. *Id.*, 15:311-314. *See also* Tr. at 334:1-10 (LAZ witness Bernhardt issued his opinions in this case despite being unaware of whether the LAZ CTs functioned accurately and did not know that the LAZ CTs are still in use). They did not cause over-registration, under-registration, non-registration, or creep. *Id.*, 15:311-314. This is further evidence that no meter or associated equipment error occurred. *Id.* Again, section 410.200 clearly does not apply.

In addition, as explained in ComEd's Initial Brief, if the LAZ Meter or LAZ CTs had experienced error, ComEd would have removed the faulty equipment from service and notified the ComEd billing department of the percentage of error. Rumsey Dir., ComEd Ex. 1.0, 6:124-128. To the contrary, after ComEd corrected the constant in ComEd's Customer Information & Marketing System ("CIMS"), the LAZ Meter and the LAZ CTs continued in service at the LAZ Facility. *Id.*, 14:289-291. This would not have happened if there had been any meter or associated equipment error. *Id.* Once again, section 410.200 clearly does not apply.

LAZ attempts to cast doubt on these undisputed facts by stating that the testing that its witness recommends would "indisputably determine whether 141362866 was accurately measuring LAZ's energy consumption" and that "CT burden testers of the type shown in LAZ Parking Exhibit 2.2 would have confirmed whether the CT ratios on LAZ Parking's metering installation were correct." LAZ Init. Br. at 18. This is much ado about nothing. As ComEd has shown, none of this is in dispute: there is no evidence that the LAZ Meter over- or under-registered in any amount, let alone in excess of 2%; and there is no evidence that the LAZ CTs inaccurately stepped down the power traveling to the LAZ Meter. ComEd Init. Br. at 13-15. Therefore, there is no need to use testing to determine what the evidence already shows: the LAZ Meter and the LAZ CTs were accurate and did not experience any error.

Indeed, LAZ's own Exhibit A clearly states that ComEd "calculated the billing adjustment from 6/3/08-5/5/10 based on *actual reads taken from the meter* and made the appropriate corrections." Ex. A to LAZ Init. Br. (emphasis added). If the meter had under- or over-registered, the actual meter reads would have been incorrect, and ComEd would not have been able to utilize them. Instead, ComEd would have had to determine a percentage of error and would have then issued a metering data correction to the actual meter reads based on that percentage of error. *See* 83 Ill. Admin Code § 410.200(a).<sup>1</sup>

Whatever happened in this case, it is not, never was, and never will be under-registration or meter error. The issue here is that LAZ was billed for only a fraction of its actual usage because ComEd used the wrong constant in CIMS for a two-and-a-half year period. Rumsey Dir., ComEd Ex. 1.0, 15:315-16:319. Contrary to LAZ's statements in its Initial Brief (LAZ Init. Br. at 17), ComEd has shown that no matter what constant is used, *the registration of usage by the meter* remains unaffected. Rumsey Dir., ComEd Ex. 1.0, 15:315-16:319. The re-billing in this case was therefore not attributable in any respect to an error in the LAZ Meter or LAZ CTs. Spitz Dir., ComEd Ex. 3.0, 8:148-151; Rumsey Dir., ComEd Ex. 1.0, 13:268-14:291. The re-billing described above was a billing error attributable solely to the incorrect meter constant in CIMS. *Id.*

---

<sup>1</sup> ComEd notes that Ex. A to LAZ's Initial Brief was not offered or admitted into evidence at the evidentiary hearing in this manner. It was, however, admitted to be genuine in response to LAZ's First Set of Requests to Admit issued on October 5, 2012.

### **III. LAZ’S POSITION IGNORES CANONS OF STATUTORY INTERPRETATION AND WELL-SETTLED LEGAL PRINCIPLES**

#### **A. In Support of Its Argument that ComEd Allegedly Failed to Perform a Post-Installation Inspection, LAZ Improperly Equates the Word “Inspection” with the Word “Test”**

In some places, the Commission Regulations use the term “test.” *See, e.g.*, 83 Ill. Admin. Code §410.150. In other places, the Commission Regulations use the term “inspection.” *See, e.g.*, 83 Ill. Admin. Code § 410.155. And in still other places the Commission Regulations use both terms, *i.e.*, “inspected and tested.” *See, e.g.*, 83 Ill. Admin. Code § 410.160. LAZ treats these separate and distinct terms as having the same meaning in every instance. LAZ is incorrect.

“The fundamental rule of statutory construction is to give effect to the intent of the legislature.” *City of Chicago v. Old Colony Partners, L.P.*, 364 Ill. App. 3d 806, 813 (1st Dist. 2006). “Giving the statutory language its plain meaning is the best means of ascertaining legislative intent.” *Id.* “In doing so, each word, clause or sentence should be given its reasonable meaning and not be discarded as superfluous.” *Id.* “Words and phrases should not be construed in isolation, but interpreted in light of other relevant portions of the statute so that, if possible, no term is rendered superfluous or meaningless.” *Land v. Board of Educ. of City of Chicago*, 202 Ill. 2d 414, 422 (2002). *See also Springfield Sch. Dist. No. 186 v. Dep’t of Revenue*, 384 Ill. App. 3d 715, 720 (4th Dist. 2008) (same). Moreover, it is “well established that, by employing certain language in one instance, and entirely different language in another, the legislature indicated that different results were intended.” *People v. Ousley*, 235 Ill. 2d 299, 313-314 (2009).

As ComEd explained in its Initial Brief, the plain language of Section 410.155 governing Installation Inspections requires “a post-installation *inspection*,” not a *test*. 83 Ill. Admin. Code

§ 410.155. Indeed, although LAZ's own witness on this topic initially claimed that there is no distinction between a meter test and a meter inspection, he later agreed that the Commission Regulations clearly distinguish between testing and inspection in this context, otherwise the use of the terms "inspected and tested" together would render one of those terms mere surplusage:

BY MS. BARRETT:

Q So in this case, I'd like to take a look at how the Commission has made a distinction between these two terms in its regulations. So let's look at part 410 again.

And we can start with Section 410.150. And that's Meter Accuracy Requirements and that talks about testing in relation to meter accuracy requirements, correct?

A I'm catching up to you. Yes.

Q And it does not talk about inspection in relation to those accuracy requirements, correct? And I am not talking about what your knowledge from the industry is. I am talking about the Commission regulations.

A Those word [*sic*] are not used, correct.

Q And now let's look at 410.155.

And that is titled Installation Inspections, correct?

A Yes.

Q And it talks about post-installation inspection. It does not talk about testing, correct? The language of the regulation.

A Correct.

Q And now let's move to 410.160. That Section is title Initial Tests, correct?

A Yes.

Q And if you read that, it actually talks about inspection and testing doesn't it?

A Yes.

Q So this section is contemplating inspection and testing being two different things, right?

A I don't know the writer's mind.

Q So if it wasn't contemplating two different things, it would be like – it would be like saying testing and testing?

A Yes.

Tr. at 308:8-309:22 (Bernhardt).

LAZ's citation to unrelated amendments to section 410.180, governing Sample Testing Procedures, is inapplicable to the question of whether the Commission's use of the word inspection in section 410.155, governing Installation Inspections, is equivalent to if the Commission had used the word test. *See* LAZ Init. Br. at 16. Similarly, LAZ's attempt to equate ComEd's movement from individually testing every commercial meter to sample testing those meters – in order to meet the requirements for pre-installation testing in section 410.160, Initial Tests – as some sort of an admission that inspection and testing are the same is unavailing. LAZ Init. Br. at 16.<sup>2</sup> To be clear: no testing is required and no testing occurs during the post-installation inspection. Rumsey Reb., ComEd Ex. 5.0, 1:22-2:23. ComEd has never done or said anything to the contrary. In any event, ComEd has explained that a post-installation test would not have revealed the constant error in this case. ComEd Init. Br. at 20-22.

---

<sup>2</sup> LAZ also asserts that sample testing is “appropriate for residential, small commercial, and other self-contained metering installations, but not for metering installations associated with instrument transformers, such as this case involves.” LAZ Init. Br. at 16. The Commission Regulations contain no such prohibition. The Commission Regulations provide the sampling procedures that must be used for sample testing “non-demand, self-contained single phase or three-wire network meters,” but they do not prohibit utilities from using those sampling procedures for sample testing other categories of meters, nor do they prohibit sample testing other types of meters in general. *Compare* 410.180(a) (specifically limited to certain types of meters) *with* 410.180 (b)-(h) (not limited to those types of meters); *and* 410.110(a)(1) (contemplating “testing data provided by the manufacturer that is used by the entity for acceptance testing of the meter” and not limited to the meter types specified in 410.180(a)); *and* 410.160 (contemplating testing at locations other than the meter shop of the utility).

**B. In Support of Its Argument that ComEd Allegedly Failed to Perform a Post-Installation Inspection, LAZ Misinterprets the Purpose of Post-Installation Inspections**

Section 410.155 does not apply to all meters that ComEd installs. It applies specifically to “any meter with associated instrument transformers and/or phase-shifting transformers.” 83 Ill. Admin. Code § 410.155. LAZ recognizes this distinction, stating that post-installation inspections “under Commission Regulation 410.155 are done only for transformer-rated metering installations ... .” LAZ Init. Br. at 19. From this limited applicability, LAZ deduces that the purpose of a post-installation inspection is to protect “only large, high-dollar value customers,” and that a post-installation inspection must therefore be a test. *Id.* See also Bernhardt Sur., LAZ Ex. 3.0, 8:161-174 (implying that there should be higher testing and inspection standards for well-heeled customers who provide more revenue to ComEd). This is incorrect.

The purpose of a post-installation inspection is to ensure the proper connection between a meter and its associated equipment. That is why it applies only to meters with associated transformers. As Mr. Rumsey testified, the Commission Regulations do not call for further testing during this inspection because prior to installation, the meter and CTs were tested and deemed accurate. Tr. at 381:4-16 (Rumsey). Thus, after installation the utility need only determine that “the connection between the two is proper and ... the current and everything is flowing through forward,” then “we can say that it’s accurately recording the customer’s usage because they’ve all been certified as being accurate.” *Id.* at 381:17-382:1 (Rumsey).

Moreover, if the Commission Regulations intended to require post-installation testing, as LAZ argues, the Commission Regulations would likely require post-installation testing of all meters, not just meters with associated equipment. And, surely section 410.155 would provide some indication of what type of testing ComEd would allegedly need to perform – by reference

to the meter accuracy requirements in other portions of Part 410 or otherwise. Section 410.155 contains no such discussion.

**C. In Support of Its Argument that ComEd’s Responses to LAZ’s Requests for Admission Were Inadequate, LAZ Ignores the Plain Language of Rule 216 and its Recent Amendment**

LAZ argues that ComEd’s responses to its requests for admission “failed to comply with the most fundamental requirements of S. Ct. Rule 216” because ComEd’s objections and responses were not sworn. LAZ Init. Br. at 5. LAZ is incorrect. As explained in ComEd’s Initial Brief, the plain language of Rule 216 and its clarifying amendment indicate that only denials must be sworn. *See* ComEd Init. Br. at 25-27. Specifically, Rule 216 only uses the word “sworn” directly in front of the phrases “statement denying” or “statement of denial.” Ill. S. Ct. R. 216(c). It does not use the word “sworn” in front of the words “answer,” “response,” or “objection.” *Id.*

Moreover, in addition to the canons of statutory interpretation discussed in Section III.A. *supra*, “[t]he punctuation of a statute is to be considered and given weight unless, from inspection of the entire statute, it is clear it must be ignored to give effect to the legislature’s intent.” *Old Colony*, 364 Ill. App. 3d at 813. The amendment to Rule 216 separates the descriptions of the different ways to answer a Rule 216(c) request with commas, stating: “The response to the request, sworn statement of denial, or written objection, shall be served on all parties entitled to notice.” Ill. S. Ct. R. 216(c). This amendment makes clear that there are three options in responding to a request for admission: a response, a denial, or an objection. *Id.* The amendment also makes clear that only a denial must be sworn. *Id.* If the legislature intended the word “sworn” to modify all three options, it would have used different word order and punctuation.

LAZ has consistently addressed this issue as if there are only two options: a sworn denial or a sworn objection. LAZ Init. Br. at 5-6; Administrative Law Judge Ruling (Feb. 13, 2014) at 4. The plain language of Rule 216 and its clarifying amendment show that this position is incorrect, and LAZ's claim that this clarifying amendment does not impact this case is unavailing. The Commission should disregard the "Admissions" in this case.

**D. LAZ Misrepresents the Law Regarding the Burden of Proof in this Case**

LAZ claims that there is a presumption that ComEd did not perform a post-installation inspection. LAZ Init. Br. at 8-9. LAZ mischaracterizes the case law in this regard. As the Complainant, LAZ has the burden of proof in this case. *Beery v. Breed*, 311 Ill. App. 469, 475 (2d Dist. 1941) (cited by LAZ). This means that LAZ must prove all elements of its claim by a preponderance of evidence. 5 ILCS 100/10-15 (standard of proof is preponderance of evidence). "There is no presumption against a defendant ... when the plaintiff, carrying the burden of proof, has not made a prima facie case, and such presumption cannot be used to relieve the plaintiff from the burden of proving his case." *Beery*, 311 Ill. App. at 475. LAZ has not met its burden to prove either that there was meter error in this case or that ComEd failed to perform a post-installation inspection.

Moreover, even if LAZ had met this burden, in order to obtain a presumption, LAZ would have been required to make a foundational showing that, among other things, ComEd could have produced evidence of a post-installation inspection *and* that ComEd's excuse for failing to produce that evidence was not reasonable. *Roeseke v. Pryor*, 152 Ill. App. 3d 771, 781 (1st Dist. 1987); *DeBow v. City of East St. Louis*, 158 Ill. App. 3d 27, 36 (5th Dist. 1987) (both cited by LAZ). LAZ did not make this showing. To the contrary, ComEd adequately explained the fact that it could not locate records related to the post-installation inspection in this case *and* why it could not locate those records. ComEd Init. Br. at 16-17; Rumsey Dir., ComEd Ex. 1.0,

15:301-305; Tr. at 385:14-387:16 (Rumsey). LAZ attempts to further muddy the waters by insinuating that ComEd’s installation and inspection records are the same as ComEd’s meter test records. LAZ Init. Br. at 8-12. ComEd has explained *ad nauseum* that this is incorrect. *See, e.g.,* ComEd Init. Br. at 9-11, 15-19. The Commission Regulations regarding record retention recognize this distinction as well. *Id.* at 17.

**E. LAZ Attempts to Institute a Rulemaking under the Guise of a Contested Case**

The Commission has the power to hear several different kinds of cases, including contested cases and rulemakings. “‘Contested case’ means an adjudicatory proceeding (not including ratemaking, rulemaking, or quasi-legislative, informational, or similar proceedings) in which the individual legal rights, duties, or privileges of a party are required by law to be determined by an agency only after an opportunity for a hearing.” 5 ILCS 100/1-30. “‘Rulemaking’ means the process and required documentation for the adoption of Illinois Administrative Code text.” 5 ILCS 100/1-90. It is undisputed that the instant docket is a contested case, not a rulemaking. Complaint at 1 (bringing case under 83 Ill. Admin. Code § 200.170, Formal Complaints, not 83 Ill. Admin. Code § 200.210, Petition for Rulemakings); 83 Ill. Admin. § 200.40 (complaint cases are contested cases).

In this contested case, LAZ seeks to substitute its method of testing “meter installations” for the method that ComEd uses to test meters.<sup>3</sup> *See, e.g.,* LAZ Init. Br. at 12, 18-20. This is problematic for two reasons. First, Part 410 tells ComEd what it must do in terms of meter

---

<sup>3</sup> ComEd does not dispute that portions of its tariffs refer to “meter installations.” *See* LAZ Init. Br. at 17-18, fn 4. That is not, however, relevant to the issues presented here. The relevant Commission Regulations in Part 410 clearly refer to meters as opposed to the broader phrase “meter installations” and the even broader definition that LAZ sometimes uses that would encompass ComEd’s separate billing system. *See generally* 83 Ill. Admin Code Part 410. *Cf.* 83 Ill. Admin Code § 410.190(a) and § 410.195(a) (referencing “meter installation locations” only with regard to where meter tests requested by the customer and the entity, respectively, shall be performed); and 83 Ill. Admin Code § 410.155 (discussing inspection of meter that has associated equipment, not testing of associated equipment).

testing and accuracy. As ComEd has shown, the tests LAZ recommends do not comply with the standards set forth in Part 410. ComEd Init. Br. at 19-20. Second, the Commission audits ComEd's "meter testing equipment and methods at least every 3 years." 83 Ill. Admin. Code § 410.140(e). Thus, the Commission knows and approves of what ComEd is doing in order to comply with the Commission's meter testing policies and procedures as expressed in the Commission Regulations. It is not up to LAZ to change those requirements or expectations in the context of a contested case. As LAZ clearly states: "Adopting LAZ Parking's position likely means that ComEd will reform its meter testing procedures ... ." LAZ Init. Br. at 20. This is an issue for a rulemaking; it is not something the Commission should address in the context of a contested case.

Moreover, LAZ claims that it would only take a "few minutes" to run the tests that LAZ recommends. LAZ Init. Br. at 14, 20. LAZ further claims that these test are "relatively easy" and "speedy." *Id.* at 19. LAZ has no cost analysis or other evidence to support this claim. LAZ certainly has not shown that its "modification or exemption" from the Commission Regulations "is economically and technically sound" as required by the Commission Regulations. 83 Ill. Admin. Code § 410.30. This "few minutes" estimate certainly cannot account for travel time, fuel costs, dispatch and coordination time, or any other associated activities or costs.

Although LAZ paints ComEd's meter testing and post-installation inspection procedures as the product of a callous and indifferent business decision on the part of ComEd, that is simply not accurate. LAZ Init. Br. at 14. ComEd complied with the Commission Regulations. ComEd Init. Br. at 15-17. This is one instance out of many – undoubtedly hundreds of thousands of meter installations – where a constant error occurred despite the implementation of the Commission and ComEd's sound policies and procedures. The Commission could certainly

craft regulations that require more aggressive, perhaps even redundant, testing and accuracy requirements, or even prerequisites to issuing adjustments for billing errors as opposed to meter errors. But that is not what the operative Commission Regulations call for. As explained in ComEd's Initial Brief, the operative Commission Regulations prescribe specific testing and accuracy requirements and contemplate that pursuant to those requirements, some errors will still occur. ComEd Init. Br. at 2, 11. The Commission also recognizes that not all errors are meter errors. Some errors are billing errors. ComEd Init. Br. at 7-13.

Finally, contrary to LAZ's claims, ComEd has not said that all post-installation field tests are unfeasible or impractical. *Cf.* LAZ Init. Br. at 10-11. Indeed, the evidence shows that ComEd has equipment similar to that espoused by Mr. Bernhardt and that ComEd utilizes such equipment for efficient and effective field testing when such testing is appropriate. Rumsey Reb., ComEd Ex. 5.0, 6:124-126. The point that LAZ fails to understand is that there is always the possibility of human error, particularly when data entry is involved. In this case, for example, the constant information could have been entered incorrectly into CIMS after either the installation or following the post-installation inspection. Tr. at 374:4-376:14 (Rumsey) (discussing the two different data points involved in entering current transformer ("CT") information into Mobile Dispatch Terminals and CIMS). Indeed, this is why sections 280.100 and 410.200(h)(1) and (f) exist, because the Commission knows that despite best efforts, mistakes leading to billing or meter errors will happen. ComEd Init. Br. at 2, 11.

#### **IV. LAZ'S INITIAL BRIEF CONTAINS SEVERAL FACTUAL ERRORS**

##### **A. ComEd Witness Ms. Marisa Spitz Did Not Dispatch ComEd Witness Mr. Derrick Moore to the LAZ Facility**

LAZ claims that Mr. Moore testified that Ms. Spitz dispatched him to the LAZ Facility after Ms. Spitz reviewed the Meter Constant Discrepancy Report ("Constant Report"). LAZ Init.

Br. at 13. This is not accurate. Mr. Moore was dispatched on April 6, 2010. Moore Dir., ComEd Ex. 2.0, 1:16-18. Subsequently, Ms. Spitz first learned of the constant error on April 23, 2010. Spitz Dir., ComEd Ex. 3.0, 4:66-71. In fact, as ComEd explained in its Initial Brief, it is possible that Mr. Moore's visit to the LAZ Facility on April 6, 2010 is what caused the LAZ Meter to show up on the April 23, 2010 Constant Report that brought this issue to Ms. Spitz's attention. ComEd Init. Br. at 4-5. In any event, Ms. Spitz never dispatched Mr. Moore anywhere.

**B. LAZ Mischaracterizes Ms. Spitz's Testimony as "Indifferent"**

LAZ states: "ComEd witness Spitz testified that the reason ComEd pays attention to these meter discrepancy reports and sends technicians out for meter verifications is that a 'large dollar value' may be associated with a discrepancy that involves a transformer-rated meter." LAZ Init. Br. at 13. This is a gross mischaracterization of Ms. Spitz's testimony and apparently part of LAZ's strategy to cast ComEd as "indifferent." *See, e.g.*, LAZ Init. Br. at 19, 20.

In fact, Ms. Spitz testified that after reviewing the Constant Report, she "obtained and reviewed a CIMS Meter Reading history for the LAZ meter" and "also requested that ComEd's Field & Meter Services ('F&MS') department perform a re-verification of the meter number and the size and type of the CT." Spitz Dir., ComEd Ex. 3.0, 5:87-93. Ms. Spitz further testified that she did this because: "[w]henver it appeared to me that there could be a large dollar value associated with a constant discrepancy, it was my pattern and practice to request a re-verification in order to confirm that the equipment information in CIMS was correct." *Id.*, 5:96-98.

In other words, because it appeared to her that a large dollar value could be associated with this constant error, she was unwilling to re-bill the customer based solely on the Constant Report until she re-verified the details of the equipment at issue. This testimony does not in any way imply that ComEd only reviews Constant Reports because "a 'large dollar value' may be

associated with a discrepancy.” LAZ Init. Br. at 13. This testimony does show, however, that far from being indifferent, Ms. Spitz was exceedingly interested, careful, and cautious in executing her job duties.

**C. The Total Amount of Unbilled Service at Issue in this Case is Not \$259,937.85**

LAZ claims, without citation to any authority, that the “total amount directly or indirectly paid by LAZ Parking to ComEd for alleged unbilled delivery services charges is \$259,937.85.” LAZ Init. Br. at 4. This is false. The evidence shows that the actual amount “directly or indirectly paid by LAZ parking for alleged unbilled delivery services charges” is \$180,943.15. ComEd Init. Br. at 22-23; Jamison Dir., ComEd Ex. 4.0, 1:21-2:23, 4:78-87; ComEd Ex. 4.03 at CCLP 0000009-11; ComEd Ex. 4.04.

**D. ComEd Did Not Install the LAZ Meter with an Incorrect Constant**

LAZ claims that “correspondence from ComEd dated October 28, 2010, a copy of which is attached as Exhibit A to this Brief, states that ComEd installed the meter with an incorrect meter constant.” LAZ Init. Br. at 4. LAZ’s Exhibit A says nothing of the sort. In fact, that document states that LAZ was “billed for electricity recorded on meter 141362866 located at 25 N. Michigan, Chicago, IL, with an incorrect meter constant that resulted in your being billed for less electricity than you actually used. We have identified the reason for this situation and it has been corrected.” Ex. A to LAZ Init. Br. This document does not indicate in any way that ComEd “installed the meter with an incorrect constant.” Moreover, the evidence shows that ComEd does not install meters with constants; ComEd enters the constant into CIMS, separate and apart from the meter. Rumsey Dir., ComEd Ex. 1.0, 8:148-156, 13:262-264, 2:25-29; Spitz Dir., ComEd Ex. 3.0, 3:56-60.

**E. ComEd Witness Mr. Rumsey Is Eminently Qualified to Opine on Issues Related to this Case**

LAZ disparages Mr. Rumsey's opinion "on what a post-installation inspection at a customer's service location would disclose" because "during all his years with ComEd he never field-tested a meter, nor did he ever field-test or 'inspect' a CT at a customer service location." LAZ Init. Br. at 12. To set the record straight: the evidence shows that over the course of his career Mr. Rumsey tested over 60,000 meters in Illinois, pursuant to the standards set forth in the Commission Regulations. Tr. at 350:10-21 (Rumsey). To the contrary, the evidence does not show how many meters Mr. Bernhardt tested, or if he ever tested a single meter. *See, e.g.*, Bernhardt Dir., LAZ Ex. 2.0, 2:10-5:109; Ex. A to LAZ Response to ComEd Motion for Summary Judgment (Sept. 25, 2015). It certainly does not show whether *he* ever field-tested a meter, nor is there any evidence that *he* ever field-tested or inspected a CT at a customer service location. *Cf.* LAZ Init. Br. at 12. Moreover, Mr. Bernhardt admitted that he has no knowledge or experience regarding meters in Illinois or meters regulated by the Commission. Tr. at 310:1-12 (Bernhardt). LAZ's criticism is misplaced.

**F. ComEd's Meter Constant Discrepancy Report is Part of its Billing Function, Not Its Meter Testing Procedures**

LAZ claims that ComEd's "Meter Testing Procedures Are Deficient and Cause Unnecessary Waste for Both the Customer, ComEd and the Commission." LAZ Init. Br. at 13. LAZ bases this claim on several factual errors described above (*see* sections IV.A. and B., *supra*), as well as its understanding that ComEd's Constant Report is part of ComEd's "approach to satisfying the Commission's testing and accuracy requirements applicable to transformer rated meters." *Id.* LAZ then makes the unsupported statement that this Constant Report involves a "profligate waste of money, time and effort." *Id.*

First, the evidence shows that the Constant Report is not part of ComEd's meter testing procedures; it is a function of the billing department. It is generated by the billing department, using information contained in the CIMS billing software, and it is reviewed by billing department employees. Spitz Dir., ComEd Ex. 3.0, 4:62-71. The Constant Report is simply not related to ComEd's meter testing policies and procedures. Second, there is no evidence in the record of the incremental cost to ComEd to generate and review the Constant Report. There is certainly no evidence to show that it involves a "profligate waste of money, time and effort."

## **V. CONCLUSION**

In conclusion, as explained above, for the Commission Regulation regarding "Corrections and Adjustments for Meter Error" – Section 410.200 – and its testing and inspection requirements to apply, a test must show the meter at issue to have an average error of more than 2%. 83 Ill. Admin. Code §§ 410.200(a)-(b), (h). The evidence clearly shows that the LAZ meter did not experience any error, let alone average error in excess of 2%. For this reason and all of the additional reasons discussed in ComEd's Initial Brief and in this reply brief, ComEd requests an order denying relief to LAZ and entering judgment in favor of ComEd.

Dated: May 13, 2016

Respectfully submitted,  
Commonwealth Edison Company

By:  /s/ Ronit C. Barrett

Ronit C. Barrett  
EIMER STAHL LLP  
224 South Michigan Avenue, Suite 1100  
Chicago, Illinois 60604  
(312) 660-7600  
[rbarrett@eimerstahl.com](mailto:rbarrett@eimerstahl.com)

Bradley R. Perkins  
EXELON BUSINESS SERVICES  
10 South Dearborn Street  
49th Floor  
Chicago, Illinois 60603  
(312) 394-5400  
[bradley.perkins@exeloncorp.com](mailto:bradley.perkins@exeloncorp.com)

*Attorneys for Commonwealth Edison Company*