

William Bates, Trustee, CRB Trust

-vs-

Illinois Power Company
d/b/a AmerenIP

Illinois Commerce Commission Docket No. 05-0667.

ORIGINAL
COMMERCIAL CLERK
2006 AUG 21 P 12:57
CHIEF CLERK'S OFFICE

INITIAL BRIEF

Throughout our complaint, we make reference to what we believe are three pertinent governing legal documents as follows: **State of Illinois Public Utility Act 92-0214, ANSI Guidelines A300 (part 1-2001 Pruning) and Champaign County Ordinance 713**. For this brief, which is a reiteration of our narrative complaint dated July 10, 2006, filed with Judge Albers of the Illinois Commerce Commission, we would like to add two more reference documents that we consider relevant and applicable: **Commerce Commission's Initial Brief (filed March 20, 2001) Docket No. 00-0699** and **Illinois Commerce Commission Docket No. 01-0012 Prepared Direct Testimony by Mr. Ronald Lee Roof on Behalf of Illinois Power (IP Exhibit 3.0 filed February 22, 2001)**.

Complaint

It is our contention in this complaint that Illinois Power d/b/a AmerenIP *failed to provide proper legal notice (Section I) prior to entering our property, and is culpable for violations of law and damage (Section II) to our property. We substantiate as follows:*

I. FAILURE TO PROVIDE PROPER LEGAL NOTICE.

In the instance of this complaint, AmerenIP failed to submit their plans for vegetation removal or to provide the requisite maps to the Chairman of the Champaign County Board as called for in (Exhibit 3) the State of Illinois Public Utility Act 92-0214 (220 ILCS 5/8-505.1) Sec. 8-505.1 (2) (B) which states "*If the vegetation management activities will occur in an unincorporated area, the notice must be given to the chairman of the county board or his or her designee.*" and (2) (E) which states "*Circuit maps or a description by common address of the area to be affected by vegetation management activities must*

accompany any notice to a mayor or his or her designee or to a chairman of a county board or his or her designee." The transcribed statement (Exhibit 4) from the Chairlady of the Champaign County Board, states that after checking with the County Attorney, no such documentation had been presented by AmerenIP to the County Chairperson or her designee in the County for the period in question.

Further, the Illinois Commerce Commission in its Initial Brief (filed March 20, 2001) Docket No. 00-0699, pg. 9, states "... *Section 8-05.1 requires that a utility 'directly notify' affected customers no fewer than 7 days before the activity is scheduled to begin. (220 ILCS 5/8-505.1).*" On pg. 8, the Commission noted "...*Additionally, it did provide some guidance as to notification to a local unit of government. 220 ILCS 8-505.1(a)(2). The notification provided for in Section 8-505.1(a)(2) ensures that local units of government receive notice and are provided with details concerning tree trimming with enough time to adequately review the affected area.*" As affected customers, we received no notice of any kind and there is no evidence that AmerenIP even attempted to provide such notice

Attorneys for AmerenIP via our request for documents provided a copy of the newspaper advertisement they ran in the Champaign News Gazette on April 1, 2005 (Exhibit 1). We think there are **three failures** that invalidate the notification. **First**, the ad makes no mention of tree trimming work to be done in the unincorporated areas of the county – i. e. it addresses the incorporated towns of Urbana and Thomasboro while *our property is in the unincorporated area*. No notice was published which addressed the easement owners of property in the unincorporated area of the county **Second**, the legal description of the ad covers "...activities in an area bounded by Perkins Road; Route 45; 200N; 2004N." This is not a legal description that makes any sense, because when plotted on a map, an enclosed area with four sides is not produced. Perkins Road, 200N and 2004N all run east-west, with Rte. 45 the only north-south boundary line. Furthermore, the 200N east-west boundary line is about 15 or so miles toward the southern end of the county. Unintelligible boundaries were described in the ad. **Third**, in any reasonable interpretation, Perkins Road bounded by Rte. 45 limits itself to properties east of Rte. 45 because Perkins Road commences at Rte. 45 and runs only eastward. This leads to the conclusion then that our property, which is west of Rte. 45, was not included within the notification area description. For clarification, please see Exhibit 2 – a hand rendered map.

Testimony by the Nelson Tree Service General Foreman corroborates: *"...It appears there was an error on my part when I determined the west boundary: I believe it should have been 1200E not 2004N as in my email. Mrs. Hott and/or the News-Gazette also erred in printing 200N instead of 2000N. Despite these errors, however, we still performed very little vegetation management activities outside of the area identified in the April 1, 2005, notice."* By means of the very words of the foreman, the description of the area in the ad was erroneous, and thus plainly the notice was defective.

Champaign County Ordinance No. 713 (Exhibit 5) requires in Section Six: *"All public utilities...shall give no less than 21 days written notice and no more than 90 days written notice, of their intent to cut, trim, or remove any trees, bushes, or shrubbery within their utility easements within Champaign County to the owners of the property on which such trees, bushes, or shrubbery are located."* AmerenIP entered our property but did not provide us prior written notice as required by the ordinance quoted above.

In a nutshell, the evidence above is overwhelming: AmerenIP failed to have a proper notice to easement property owners published in the newspaper and failed to notify county easement property owners *directly* or the county board chair *directly* or to deliver a vegetation activity plan and map – all are mandatory by law.

II. VIOLATIONS OF LAW AND PROPERTY DAMAGE.

The Public Utilities Act requires in Sec. 8-501.1 (1) that an electric utility company shall *"Follow the most current tree care and maintenance standard practices set forth in ANSI A300 published by the American National Standards Institute..."* Also, throughout all of ANSI 300 (Exhibit 6) or in its special companion 2004 publication booklet, authored by Geoffrey P. Kempter, entitled Best Management Practices – Utility Pruning of Trees, nowhere is the cutting down to ground level of all vegetation an acceptable practice. Instead, strict and detailed instructions for careful utility pruning practice observing line clearance standards are set forth therein.

In addition to ignoring the State of Illinois Public Utility Act requirements, AmerenIP failed to abide by Champaign County Ordinance No. 713 that was enacted in 2004 after public

outrage demanded new and more stringent remedies to the many and repeated AmerenIP vegetation removal violations. The entire ordinance clearly prohibits AmerenIP from the kind of damage they perpetrated upon our property. In substantive support of our argument, excerpts from key sections of the ordinance are cited below:

Section One: *"...The landowner must give written consent on a document that details what cutting, trimming, or removal of trees, bushes, or shrubbery will be performed by the public utility, electric cooperative, or municipal utility for the consent from the landowner to valid."* We have given no such written consent to AmerenIP, and Nelson Tree Service, their agent, evidently ignorant of the AmerenIP legal obligation to property easement owners, did trespass onto our easement property and indiscriminately level all its vegetation. Compounding the unauthorized easement property invasion, Nelson Tree Service also went outside of the 10 foot easement boundary, trespassed onto our private property and cut down vegetation there to ground level as well.

Section Four: *"No public utility, electric cooperative, or municipal utility shall remove, trim, or cut any tree, bush, or shrubbery or any portion thereof within its utility easement except to the extent necessary to prevent interruption of or interference with the delivery of utility services or to protect the persons and property of the residents of Champaign County or to protect the property and persons of the utility, its agents and employees."* None of the vegetation cleared down to ground level on our property by AmerenIP's contractor was likely to have prevented "interruption of or interference with the delivery of utility services..."

Section Five of Ordinance No. 713 sets out complete and precise tree-to-power line clearance standards to be observed, and hence, further prohibits utility companies such as AmerenIP from cutting down all vegetation on easement property to ground level.

At the hearing on these matters before Judge Albers on August 8, 2006, AmerenIP did make objection to the legality of Champaign County Ordinance 713 – intimating, as I understand it, that the ordinance has no governing legal authority with respect to the vegetation management activities of AmerenIP. Simply put, we believe that the Public Utility Act empowers county governments to enact ordinances covering vegetation

management that electric utility companies must observe – there is no evidence by AmerenIP to the contrary. Moreover, beyond the authority extended to county governments the Illinois Commerce Commission has the authority to set additional standards for vegetation management activities of a public utility electric company. This quote is taken from the Commerce Commissions Initial Brief Docket No. 00-0699, pg. 9, *"...However, it is incorrect to state that the Commission has no authority to set additional standards. Subsection 8-505.1(c) states, in part, that the provisions of Section 8-505.1 shall not in any way diminish or replace other civil or administrative remedies available to a customer or class of customers under the Act nor invalidate any tariff approved or rule promulgated by the Commission. Clearly, the statute's intent was to allow the Commission to add to the standards in the statute if it so desired.*

Joseph of AmerenIP's Director of the Regulatory of Champaign County Ordinance 7777, we request that the Commission in its ruling validate the empowerment of county governments to enact ordinances which set standards for vegetation management activities of electric utility companies.

May I now draw attention to what we think is relevant and conflicting testimony by Mr. Ronald Roof who is now the Vegetation Supervisor for all of Ameren Corporation. Mr. Roof gave the initial testimony in 2001, and Mr. Roof, on behalf of AmerenIP, submitted the more recent testimony in this case on July 31, 2006. If possible, we ask that the Commission read the entire transcript of each event in order to compare and contrast the content of the two testimonies. We provide several excerpts beneath.

This first is testimony given on behalf of Illinois Power by Mr. Ronald Lee Roof before the Illinois Commerce Commission Docket No. 01-0012 (filed on February 22, 2001) in support of the Illinois Power Vegetation Management Tariff filing. Mr. Roof is identified at that time as the Supervisor of Forestry Operations and the individual responsible for establishing and implementing the Company's vegetation management program. He responded to the inquiries below as follows:

Pg 5 Q. II. Please describe sections 13.3.01 and 13.3.02 - [Public Utility Act]???

A. These sections discuss the individuals that will be responsible for carrying out IP's Line Clearance Program, and require that only qualified, professionals knowledgeable in

horticulture and line clearance requirements carry out these duties. In order to ensure that this condition is met, our contracts with third party contractors specify that each individual engaging in vegetation management activities on behalf of IP must be line clearance certified by OSHA.

Our documentation shows that neither the crew nor the foreman were certified to perform utility line clearance duties.

Pg. 11 Q. 22. Please describe section 13.4.03.

A. Referencing line 1. With regard to the Wire Zone for Low/Medium Voltage lines, generally the tariff states that Illinois Power will take into consideration the factors in Section 13.4.07, including proper pruning and crown reduction, before determining whether to prune or remove a tree. If the required pruning indicates that the tree cannot be trimmed in an arboricultural correct manner after taking into consideration all the factors in Section 13.4.07, and it is determined that the tree should be removed, the property owner will be contacted and provided the choice between the required pruning and removal.

No such contact was ever attempted by AmerenIP in this case.

Pg. 11. Q. 23. What are the tariff provisions regarding clearance in the danger zone?

A. Referencing line 17... If Illinois Power determines that removal is required based on the fact that the tree cannot be trimmed in an arboriculturally correct manner and after taking into consideration all the factors in Section 13.4.04, the property owner will be notified. While Section 13.4.04 does not explicitly indicate this, no vegetation will be removed where a Low/Medium Voltage line is at issue unless the property owner agrees. Illinois Power has agreed to change the tariff to make this condition clear. If the property owner objects to removal and accepts the required pruning, Illinois Power will prune the vegetation.

The utility certainly has a right to be informed pruning of our vegetation, but Ameren will not do it, rather it is responsible for clear-cutting and pruning, not all vegetation on our easement property in general form.

The foregoing testimony is in sharp contrast to testimony provided in this case by the same Mr. Roof. Now, in 2006, Mr. Roof assiduously avoids the subject requiring notification of easement owners and the easement owner's right to participate in the vegetation management activity plan. His attempt to divert attention away from the severity of the trespass and clear-cutting transgressions becomes transparent. To illustrate this point briefly, below are passages from our Rebuttal to the Response Testimony of Mr. Roof dated August 4, 2006.

REBUTTAL TO TESTIMONY OF RONALD ROOF

Referencing lines 262 through 283 – Rebuttal 7.

Mr. Roof quotes from the easement document (Exhibit 7) the standard-form clause rights of the utility company with respect to vegetation management. He ignores that the easement agreement was amended and superseded by revised agreement severely limiting those rights. Please see the two amending letters attached to and a part of the easement agreement (Exhibit 7). Furthermore, Mr. Roof, who by his own declaration has "extensive knowledge of the Illinois statutes and regulations applicable to utility line clearing and vegetation management activities," fails to tell us how and when the Illinois Public Utilities Act and ANSI 300 limit the rights of the electric utility company in its vegetation management activities on private easement property. An impartial expert would be expected to give a complete and objective analysis. Mr. Roof, as "the Vegetation Supervisor for the Ameren Corporation" is miscast as an unbiased authority.

Referencing lines 290 through 293 – Rebuttal 8.

Mr. Ronald Roof concludes "That Mr. Bates accusations of clear-cutting and improper trimming are completely inaccurate and without merit." This is a comprehensive and damning statement that Mr. Roof fails to support with argument or evidence. Our photos 1-1 through 4-4 submitted July 10, 2006, visibly confirm the clear-cutting. As to improper trimming, the complaint is that the area clear-cut should properly have been trimmed or pruned in accordance with ANSI 300 guidelines – i.e. when you clear-cut an area, all the

