

OFFICIAL FILEILL. C. C. DOCKET NO. 05-0667Complainant's Exhibit No. AWitness W. BatesDate 8/8/06 Reporter CB

Via United States Certified Mail.

William Bates
631 County Rd. 1200E
Tolono, Illinois 61880
(217) 485-3086
Email WillB425425@msn.com

Judge John Albers
Illinois Commerce Commission
537 East Capitol Avenue
Springfield, Illinois 60701
(217) 782-7434
Email jalbers@icc.illinois.gov

Ref: Docket No. 05-0667.

Dear Judge Albers:

In accordance with your instructions from our last hearing, please accept this narrative format and the accompanying documentation describing the specifics of my complaint No. 05-0067 brought before the Illinois Commerce Commission.

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**.

The Exhibits attached are used in support of our presentation in the order as listed below:

1. Copy of Certificate of Publication for ad in News-Gazette 1 Apr 05.
2. Hand drawn map according to boundary lines of ad in Item 1.
3. Public Act 92-0214 - hi-lighted excerpts.
4. Transcribed statement by Champaign County Board Chair 2005.
5. Champaign County Ordinance No. 713.
6. ANSI Guidelines A300
7. Nelson Tree Service Safety Department certification stamp.
8. ISA printout showing certification ratings.
9. Photographs showing damage to property.
10. Aerial photograph depicting forested area of our farm.

In this complaint, we intend to present evidence to show clearly that AmerenIP (1) did not give proper legal notice before entering our property in June or July 2005 and (2) upon entering the property, AmerenIP, represented by Nelson Tree Service without a properly certified arborist, did violate applicable laws and did recklessly damage our property, both inside and outside the easement area, by destroying healthy trees, bushes and shrubbery and other plant life when they severed every bit of vegetation to ground level. Finally, we request in (3) the summary and conclusion that the Commission find AmerenIP to be in violation of the Illinois Public Utility Act, and because of continued and unrepentant misbehavior, impose fines and sanctions on AmerenIP to the maximum extent permitted by law.

1. FAILURE TO PROVIDE PROPER LEGAL NOTICE.

Attorneys for AmerenIP via our recent request for documents provided a copy of the newspaper advertisement they ran in the Champaign News Gazette on April 1, 2005 (Exhibit 1). To my mind, there are **three failures** in this notification ad. **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. **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. **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 in the notification. For clarification, please see Exhibit 2 – a hand rendered map.

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 required 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." Attached, as Exhibit 4, is the transcribed statement from the Chairlady of the Champaign County Board, stating that after checking with the County Attorney, no such documentation had been presented by AmerenIP to her or her designee in the County.

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 gave us no notice as required by the ordinance quoted above.

The expiration date for work to be completed by AmerenIP/Nelson Tree Service under the subject ad published 1 Apr 2005 would have been 30 Jun 2005. My recollection is that the vegetation clearing of our property took place just after the July 4th holiday when I met and spoke with Mr. Tash Trees at the property. He was polite and apologized for the obvious clear-cut damage to the property and said that they didn't think that the owners lived in the area and that they hadn't wanted to damage the month old crops in the field so the supervisor had made the decision to clear-cut the forested area down to ground level for easy vehicular access to the overhead lines. Indeed, the easement area had been completely denuded down to ground level and looked as if a bulldozer had just scraped out a new roadway. And if the field crops had been damaged, compensation would have to be paid. Whereas if the property owners do not live nearby or are unaware of the work schedule or of the work contemplated, then a crew can sneak in, clear-cut, and get out in a day at a fraction the cost of a proper pruning job. This line of thinking suggests itself from the actions and the words of Nelson Tree Service. In any event, there is no doubt that the trimming could easily have been scheduled before planting in May, when there was complete access to the power lines along the open field from the north - the senseless damage to our property should thus have been avoided.

In our request for documents, we were first provided information that Mr. Tash Trees and Mr. Jose Amalya had performed their clearing-to-ground level work on 23 and 24 Jun 2005. When we asked for any and all written documentation evidencing the work performed by Nelson Tree Service, the reply from AmerenIP was that there no written documentation existed. This seems an obvious stonewall, inasmuch as it is hard to fathom that they knew the work was done on 23 & 24 June 2005 but not a single company file or work order, or phone record, or employee time card, or e-mail etc. survives to show that the work was done on those days, or who authorized it. Perhaps there would be a different response if the IRS or a company auditor asked for a production of those same documents. The point here is that if the work was done after 30 June 05, then obviously the property was entered illegally, as the window of time for the work completion would have expired.

In a nutshell, the proof is overwhelming. AmerenIP failed to publish the proper notice and has failed to deliver the right materials to the right people as required.

2. 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..." (See attached copy of where hi-lighted in yellow). Also, nowhere in 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, is the cutting down to ground level of all vegetation an acceptable practice. Instead, strict and detailed instructions for careful utility pruning practice are set forth therein.

In addition to ignoring the State of Illinois 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 is attached and 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, did trespass onto our property and indiscriminately level all its vegetation.

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 is too lengthy to show here, but it sets out precise tree-to-power line clearance standards to be observed, and thus, further prohibits utility companies such as AmerenIP from cutting all vegetation on easement property down to ground level.

Further, we believe that AmerenIP was **negligent** in their employment of Nelson Tree Service when it did not ensure that the proper utility certifications were in place to oversee the vegetation management along electric power lines in Champaign County. When we asked for the employee names and proof of proper certification by Nelson Tree Service, the names provided in the AmerenIP initial response to our request for documents was that the crew chief and his helper, Mr. Tash Trees and Mr. Jose Amalya, who were responsible for the chainsaw cutting of our vegetation to ground level, had the proper credentials. But the only document produced, claiming ANSI certification for Mr. Trees, appeared fictitious and was in fact a rubber stamp certification (Exhibit 7) by the

Safety Department of Nelson Tree Service. After we pointed this out, AmerenIP next claimed that Frank "Pete" McCloud was the area supervisor and that he had been properly certified to do their work in Champaign County. But the national database for ISA shows that Mr. McCloud is not an ISA Certified Arborist/Utility Specialist. For the period in question, Mr. McCloud was not authorized to carry out work along electric power lines for a utility company, but AmerenIP has claimed that Mr. McCloud held the proper certification for utility work by Nelson Tree Service in Champaign County. See the printout pages (Exhibit 8) from the ISA web site showing the listing for the ISA Certified Arborist/Utility Specialist with a rating of "U", while Mr. McCloud has the lesser rating of an "A" – again, we emphasize that he was not certified by ANSI for utility company work.

Compounding the aforementioned violations of law is the fact that Nelson Tree Service went outside of the 10 foot easement boundary, trespassed onto our private property and cut down vegetation there to ground level as well. We want to inform the Commission as a part of our complaint that we have reason to believe that there has been an attempt by AmerenIP to skirt their obligations under the Public Utility Act. When we first got through to AmerenIP in Missouri by phone to complain that our property had been entered without proper notice and that its vegetation had been completely cut down to ground level, we were told that our complaint would have to be taken up with Nelson Tree Service who were under contract for our area and the only responsible party for our easement violations. (We note for the record, that Illinois easement holders who wish to communicate with AmerenIP are required to navigate the many menu hurdles of their 800 phone number that is finally answered at their Corporate Offices in Missouri by a clerk with limited knowledge.) When I then met with Mr. Frank "Pete" McCloud of Nelson Tree Service in mid-July of 2005, he was not even aware of the easement boundary line on our property, nor was he familiar with the property ownership or the terms of our easement agreement with AmerenIP. His attitude was that I was a nuisance to be dismissed, and that any vegetation near the power lines was his to dispose of as he saw fit - including the use of chemical spray if he so desired. He was pleased with the clear-cut, annoyed at our complaint and saw nothing wrong with the property recently denuded of its vegetation by his crew. When I explained that we had not been notified as required before entry to the property was permitted, he commented that notice had been put in the newspaper "a long time ago" and that he would come

onto our property anytime he “damn well” pleased.” The brutish behavior of Mr. McCloud and the continued denial of any responsibility by AmerenIP in Missouri led to this complaint to the Commerce Commission. As a result of this experience, we think it important for the Commission to know, examine and oversee the non-competitive parts of the contract(s) between AmerenIP and its contractors, such as Nelson Tree Service, so that the regulated responsibilities of AmerenIP to easement property owners do not get passed off to some soon-insolvent or undercapitalized tree trimming operation outside the Commission’s purview and maybe even resident in another state. We have an easement agreement with AmerenIP, and we see no reason why AmerenIP should not be required to directly handle all matters pertaining to its easement obligations. The contract with Nelson Tree Service is solely the property and business of AmerenIP.

SUMMARY AND CONCLUSION

Quite frankly, this is a case that might easily have been resolved with an admission on the part of AmerenIP that a mistake had been made, an apology offered, and a reasonable settlement for the damages negotiated. That is certainly the moral and ethical path to take. Instead, AmerenIP has chosen to *deny, deny, and deny*. AmerenIP has (1) denied responsibility for the wrongful acts of their agent, Nelson Tree Service. AmerenIP has (2) denied that any damage has been perpetrated to our property - even after 27 incriminating photographs of the damaged area (Exhibit 9) have stared them in the face. AmerenIP has even (3) denied the term clear-cut, as it pertains to the clearing of vegetation, has a sufficiently precise meaning for their attorney – so that this philosophical artifice becomes the basis for a further denial that no easement property in all of Champaign County was clear-cut, including the subject property in this complaint!

We acknowledge that as a public utility company, AmerenIP has a legitimate interest in vegetation clearing within their easement boundaries, but these interests are defined and limited by applicable laws, rules and regulations that sometimes, lacking their own initiative, they must be made to observe.

We sincerely regret that it was necessary to involve the time and resources of the Commission in this minor dispute. As was pointed out at our last hearing, I stand to make no monetary gain from your ruling. On the contrary, the pressing of this complaint

has cost me a large expenditure of time and effort and has been an emotional drain as I am untrained and ill suited to deal in legal matters. But here, in this case before you, a wrong needs to be righted. When a behemoth business entity, such as AmerenIP, uses its corporate status and economic might to trim corners and cut costs, by blatantly disregarding and challenging through intimidation the property rights of individual landowners, it would be smarter and easier for the small unfunded property owner to simply swallow the damages incurred, walk away and hope not to be victimized again. On the other hand, if these transgressions are to stop, some of us must be willing to stand up and contest the transgressor. We know it is the instinct of the corporate beast is to always put profits before ethics. That is why we have brought this action – we want and expect AmerenIP to bring ethics back into balance with their profits – to ethically manage the beast within. We want AmerenIP to stop entering our property without proper notice, and stop chopping down our trees, bushes and shrubs, and be made to observe all the laws, rules and regulations that apply to them, and we implore AmerenIP, through its policies and employees, to act with civility and respect for the legal rights of the property owners with whom it hold easement agreements.

As evidence of the pattern and trail of misbehavior exhibited by AmerenIP in Champaign County, we encourage the Commission to read closely the entire first page of the Champaign County Ordinance No. 713. The content of that page is aimed directly at putting an end to the many vegetation abuses, over time, committed by Illinois Power, the predecessor to AmerenIP. A particularly poignant statement applicable in this case from that ordinance page reads:

“...the Champaign County Board finds that the continued presence of mature trees, bushes and shrubs is necessary for the preservation of the forests located within Champaign County and that the replacement of mature trees, bushes, and shrubs damaged or destroyed by excessive cutting or trimming with younger or replacement plants is not sufficient to preserve those forests...”

Our farm is located about one mile north of the Urbana city limits. The enclosed aerial photograph (Exhibit 10) shows the forested area of our farm to be part of a small island of trees amidst the surrounding developed farm acreage. It acts as a forest preserve for the remaining area wildlife.

We suggest for your consideration the Champaign County Ordinance No. 713 that provides as follows:

"Section Seven: In the event that any tree, bush, or shrub located within a utility easement within the unincorporated areas of Champaign County is cut, trimmed, or removed other than as set forth in this ordinance by any official, employee, or agent of a public utility, electric cooperative, or municipal utility or at the direction of such persons, the individual(s) or entity authorizing such acts and the utility shall each separately pay a fine of \$500.00 for each and every tree, bush, and shrub that is cut, trimmed, or removed in violation of this Ordinance. The individual performing the work of cutting, trimming, or removing the tree(s), bush(es), or shrub(s) will not be liable for paying a fine, and his or her employer may not charge the individual for the employer's or the utility's fine.

Even a year later, I believe it is possible for an arborist to visit the clear-cut area and determine the number of trees, bushes and shrubs cut down to ground level by Nelson Tree Service.

In conclusion, we believe that we have amply shown that Nelson Tree Service, acting on behalf of AmerenIP, entered our property **illegally** without having first given proper notice. Nelson Tree Service then proceeded **illegally**, without our consent, to cut down all trees, bushes and shrubbery and other plant life on the ten-foot easement strip along the overhead electric power lines, and also went beyond the easement boundary for approximately another 15 feet to cut down all vegetation to ground level. Because of the long, continuing and repeated violations in Champaign County and the egregious clear-cutting damage, exacerbated by trespass in this case, we respectfully ask that the Commission find AmerinIP to be in violation of applicable laws and fully responsible for damages to our property, and for the reasons stated above, we ask the Commission to impose the most severe penalties permitted under the law.

Very truly yours,



William Bates, Trustee, CRB Trust

Copy to:
Elliott M. Hedin, Brown, Hay & Stevens