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**ILLINOIS COMMERCE COMMISSION**

**STATE OF ILLINOIS**  
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COMMERCE COMMISSION  
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**James L. McKnight** :  
-vs- : **06-0678**  
**Commonwealth Edison Company** :  
: :  
**Complaint as to power interruption** :  
**July 31, 2006-August 2, 2006 in** :  
**Chicago, Illinois.** :

**RESPONDENT'S MOTION TO DISMISS**

Now comes the Respondent, Commonwealth Edison Company ("Respondent" or "ComEd"), by and through its attorney, Mark L. Goldstein, and moves to dismiss the captioned formal complaint ("Complaint") filed by James L. McKnight ("Complainant"), pursuant to 83 Ill. Adm. Code 200.190.

**NATURE OF COMPLAINT**

Complainant, an attorney, alleges that ComEd should reimburse him for various expenses he incurred as a result of a power interruption between July 31, 2006 and August 2, 2006. By letter dated August 15, 2006, with supporting bills, to Respondent, Complainant filed a claim for damages totaling \$616.66., attached to the complaint.

Attached to the Complaint were various his Illinois Commerce Commission Complaint Form, citations to Sections 10-109, 16-125 and 16-125 A of the Public Utilities Act (220 ILCS 5/10-109, 5/16-125 and 5/16-125A, respectively). Also, as part of the attachments to the complaint were the September 11, 2006 and September 12, 2006 letters from ComEd denying the claim because the power interruption was not caused by any negligence on the part of ComEd.

Thus, the Complainant has provided all the information necessary for ComEd to file this Motion to Dismiss.

**THE SECTIONS OF 83 ILL. ADM CODE CITED BY COMPLAINANT ARE NOT APPLICABLE TO THE FILING OF A CLAIM FOR DAMAGES**

Complainant's citations to the various sections of the Public Utilities Act (Act) are irrelevant. These sections of the Public Utilities Act are simply not relevant or applicable to filing a claim for damages due to a service interruption. The relevant section is Section 5-201 (220 ILCS 5/5-201).

**THE COMPLAINT SHOULD BE DISMISSED BECAUSE THE COMMISSION LACKS JURISDICTION OVER THE SUBJECT MATTER OF THE COMPLAINT**

Again, as noted above, Complainant seeks reimbursement for costs incurred in the amount of \$616.66. Complainant filed the appropriate claim form with ComEd and the claim was denied.

Complainant fails to allege that the actions taken by ComEd in evaluating and denying the claim violated any section of the Act, or the Commission's rules. Complainant cannot allege any of these violations because ComEd has not violated any of the foregoing. Complainant is not entitled to recover any damages and has no standing to file a complaint with the Commission.

In any event, as the Commission and the Administrative Law Judge are well aware, the Commission has set up a separate procedure for utilities to handle such claims as was made by the Complainant. Complainant's claim was handled appropriately. There is no allegation that ComEd violated the procedure for handling Complainant's damages claim.

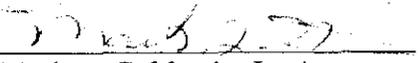
In the recent complaint case of James Fransen v. Commonwealth Edison Company, Docket 06-0475, Order dated September 26, 2006, the Commission dismissed the claim for damages. The Commission relied upon Section 5-201 in stating the following on page 2 of its Order: "Section 5-201 of the Act states that a 'public utility shall be liable' to affected persons for 'all loss, damages or injury' caused when the utility 'shall do, cause to be done ore permit to be done any act, matter or thing prohibited, forbidden or declared to be unlawful. However, Section 5-201 does not provide that such matters shall be adjudicated by the Commission. Rather, Section 5-201 declares that '[a]n action to recover for such loss, damage or injury may be brought in the circuit court by any person or corporation.'" (Emphasis added.) The Commission concluded that Mr. Fransen could initiate an action to recover damages in the Circuit Court under Section 5-201. On this basis, the complaint for damages was dismissed.

Finally, the Commission's statutory interpretation of Section 5-201 is based on longstanding Illinois judicial precedent. See e.g. Barry v. Commonwealth Edison Co., 374 Ill. 473, 29 N.E. 2d 1014 (1940).

For all of the foregoing reasons, the Complaint is not subject to review under the Commission's complaint procedures and the Complaint should be dismissed.

WHEREFORE, Respondent, Commonwealth Edison Company respectfully requests that the Complaint filed by James L. McKnight against Commonwealth Edison Company on October 17, 2006 be dismissed with prejudice.

Respectfully submitted,  
Commonwealth Edison Company

By:   
Mark L. Goldstein, Its Attorney

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**STATE OF ILLINOIS**

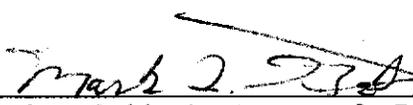
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**NOTICE OF FILING**

TO: Parties on Certificate of Service

PLEASE TAKE NOTICE that on October 20, 2006, I filed with the Chief Clerk of the Illinois Commerce Commission my Appearance as attorney for Respondent and a copy of Respondent's Motion to Dismiss, attached hereto, copies of which is hereby served upon you.

  
\_\_\_\_\_  
Mark L. Goldstein, Attorney for Respondent  
108 Wilmot Road, Suite 330  
Deerfield, IL 60015  
(847) 580-5480

**CERTIFICATE OF SERVICE**

I hereby certify that on October 20, 2006, I served a copy of my Appearance as attorney for Commonwealth Edison Company and Respondent's Motion to Dismiss, by causing copies thereof to be placed in the U.S. Mail, first class postage affixed, addressed to each of the parties indicated below:

Ms. Elizabeth A. Rolando  
Chief Clerk.  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 62701

Ms. Eve Moran  
Administrative Law Judge  
Illinois Commerce Commission  
160 N. LaSalle St., Ste. C-800  
Chicago, IL 60601

Mr. James L. McKnight  
26 E. 14<sup>th</sup> Place, Unit 15  
Chicaog, IL 60605

  
Mark L. Goldstein