

THE FOLLOWING IS SUBMITTED AS COMPLAINANT'S BRIEF, AS PER
THE REQUEST OF THE COMMISSION AT THE CONCLUSION OF THE
EVIDENTIARY HEARING THEREON

I

STATEMENT OF JURISDICTION

The Court has jurisdiction of the parties and subject matter hereof.

II

STATEMENT OF FACTS

THE FOLLOWING IS UNDISPUTED:

1. Complainant purchased the property involved in this dispute to wit: 8106 Reese Road, Harvard, Illinois 60033, in 1967 and has continuously used said property as her principal residence from that time to the present.

2. That prior to said purchase as aforesaid Respondent had installed electric wires, carrying 7,200 volts of electricity across a sizable portion of the property to a connection to its "step down" transformer. These wires are overhead wires connected to two line poles which are on the property. The transformer is attached to the second or final pole in the line. The meter box for the system is down line on the same pole, beneath the transformer, the point of connection.

3 The overhead wires, as aforesaid, have on numerous occasions since 1967 been adversely affected by trees on the property. From 1967 to the present, Respondent has repaired said damage, and on numerous occasions has performed preventive maintenance on the property such as tree trimming, tree removal, landscaping, installation of guy wire and guy guard, and the like. These services of Respondent were all performed with no charge to Complainant.

4. The system of the electric service as expressed aforesaid continues to the present time, i.e. primary electric wires suspended overhead across two poles across the property of Respondent to a final connection to a transformer located on the final pole.

5. Complainant has requested, citing a concern that the wires constitute a safety hazard, that Respondent remove its primary wire and transformer to a location which is not on the property of Complainant, and that Respondent bury all wires from its transformer or from the west pole (first pole) on or off the fenced portion of the property to the electric service of Complainant, all at the cost of Respondent.

6. Following the refusal of Respondent, as aforesaid, Complainant filed the subject Complaint.

III

ISSUES

THE ISSUES PRESENTED IN THIS CASE ARE AS FOLLOW:

- 1. Are the subject line poles the property of Complainant or Respondent?**
- 2. Has Respondent created, or in the alternative, has allowed a dangerous condition to exist on the property of Complainant?**
- 3. Can the dangerous condition expressed aforesaid be corrected or in the alternative removed within the limits of the Respondent' expertise, equipment, manpower and the like?**
- 4. Has the physical condition of the existing wiring on the property of Complainant caused a detriment to Complainant?**
- 5. Is Respondent Estopped from denying that it owns the subject line poles?**
- 6. Has Respondent breached its contractual duty to Complainant, its customer, to provide her with electricity in a safe manner?**
- 7. Is the continuing refusal of Respondent to correct the wiring issue, as expressed aforesaid, such as to constitute either gross negligence or, in the alternative, willful and wanton misconduct?**

IV

POINTS AND AUTHORITIES

1. ESTOPPEL

- a) 810 ILCS5/1-102 – Supplementary general principles of law applicable.
- b) West's Encyclopedia of American Law
Wordsmith Words:
Noun – “A bar preventing one from asserting a claim inconsistent with what was previously stated, especially when it has been relied upon by other.”
Usage – “. . . Miller explains, says ‘once you’ve set out certain positions that other people have relied on over a period of time, you can’t reverse those positions to their detriment.’”
- c) Real Estate Dictionary:
“A doctrine of law that stops one from later denying facts which that person once acknowledged were true and other accepted on Good Faith.”
- d) Dental Dictionary
“A preclusion, in law, that prevents a person from alleging or denying a fact because of his or her own previous act or allegation.”
- e) Law Encyclopedia
Equitable Estoppel
“Equitable estoppel, sometimes known as estoppel in pais, protects a party who relies detrimentally on another’s voluntary conduct – action, silence, acquiescence, or concealment of material facts.”
- f) Obscure Words
“a bar to alleging or denying a fact because of one’s own previous contrary actions or words”
- g) Legal Definition of Estoppel
Duhaine – Law + Legal Information = Justice
“A rule of law that when person A, by act or words, gives person B reason to believe a certain set of facts upon which person B takes action, person A cannot later, to his (or her) benefit, deny those facts or say that his (or her) earlier act was improper.”

By William Blackstone as:

“An estoppel . . . happens where a man hath done some act or executed some deed which estops or precludes him from averring any thing to the contrary.”

A 1891 English court decision summarized estoppel as:

“ . . . a rule of **evidence** which precludes a person from denying the truth of some statement previously made by himself.”

h) Wikipedia, the free encyclopedia

“**Estoppel** in its broadest sense is a legal term referring to a series of legal and equitable doctrines that preclude ‘a person from denying or asserting anything to the contrary of that which has, in contemplation of law, been established as the truth, either by acts of judicial or legislative officers, or by his own deed, acts, or representations, either express or implied.’”

i) City of Bradford v. Pennsylvania & New York Tel. & Tel. Co., 26 Pa C.C. 321, 1902, WL 2851, Pa.Com.Pl., 1902 (No.1) is states . . .

“estoppels apply to corporations as was well as individuals . . . Where corporations have the power to do an act they may be estopped from objecting that the form they adopted was not the exact mode prescribed in the charter . . .”

2. CONTRACT:

a. Title 83, Public Utilities Administrative Code Involved

411.10 Purpose

a)(1) “. . .reflect true system reliability. .. risks of future outages, indicated by age, condition, design and performance of transmission and distribution facilities and invest the maintenance, repair, replacement and upgrade of facilities and equipment . . . “

a)(3) “. . .reliability service is essential to health, safety and welfare of citizens . . . “

b)(2) “. . .to assure reliable delivery of electricity of all customers . . .”

b. Title 83, Public Utilities Administrative Code Involved

411.100 Reliability Obligations

a) “. . . entity shall provide services and facilities for adequate, efficient and reasonable level of reliability

b) “. . . entity shall plan, design, construct, operate & maintain its facilities, including equipment, apparatus, systems and property to prevent interruptions of service . . .”

- c) “. . . entity shall design its system according to generally accepted engineering practices including expected weather, animal and other conditions . . . “
- f) “. . . entity shall adopt & maintain appropriate operating procedures and reliability related administrative procedures . . . “
- G) 220 ILCS 5/Art. VIII – Service Obligations and Conditions
 Sect. 8-101 “Duties of public utilities; nondiscrimination. A public utility shall furnish, provide, and maintain such service instrumentalities, equipment, and facilities as shall promote the safety, health, comfort, and convenience of its patrons, employees, and public and as shall be in all respects adequate, efficient, just, and reasonable.

3. GUY WIRE:

a. *Gouge v. Central Illinois Public Service co.*, 195 ILL.App.3d 1026, 52 N.E.2d 1304, 142 Ill. Dec.563, 1990 W: 39312, Ill. App. 5 Dist., April 02, 1990 (No 5-89-0122 it states “145 14 Care Required in General 145 14(1) k . . . Utility company owes duty to general public to exercise reasonable care in the installation of its utility poles; where reasonable care requires that the utility pole have guy wires attached . . . “

b. *Gouge v. Central Illinois Public Service Co.*, 144 Ill. 2d535, 582 N.E. 2d 108, 163 Ill. Dec. 842, 1991 WL 183106, Ill., September 19, 1991 (No. 70291) it states “. . . guy wires were used to prevent utility poles from falling under their own weight or from strain of wind, ice, or other natural conditions . . .”

c. *Miller v. Highway Com’r of North Otter Tp. Road Dist.*, 344 Ill. App. 3d 1157, 801 N.E. 2d 599, 279 Ill Dec. 925, 2003 WL 23019414, Ill. App. 4 Dist., December 18, 2003 (No. 4-03-0347) it states “. . .Utility Companies do have a duty to exercise reasonable care in the installation and maintenance of their utility poles . . . to properly guy . . .”

4. PUBLIC UTILITIES ACT

a) 220 ILCS 5/5-201 - Civil Damages

“In case any public utility shall do, cause to be done or permit to be done any act, . . . , and if the court shall find that the act or omission was willful, the court may . . . award damages for the sake of example and by the way of punishment. . . .”

. “In every case of a recovery of damages by any person or corporation under the provisions of this Section, the plaintiff shall be entitled to a reasonable attorney’s fee to be fixed by the court . . .”

b) 220ILCS 5/5-202.1 – Misrepresentation before Commission; penalty.

“Any person or corporation . . . who knowingly misrepresents facts . . . or withholding of material information in any proceeding shall be subject to a civil penalty.”

c) 220ILCS 5/5-101 Utilities to comply with requests and to obey orders of Commission

“Whenever required by the Commission, every public utility shall deliver to the Commission, any or all maps, profiles, reports, documents, books . . . in its possession.”

“Every public utility shall obey and comply with each and every requirement of this Act and every order, decision, direction, rule . . . “

V

ARGUMENT

1. RESPONDENT IS ESTOPPED BY LAW FROM DENYING THAT IT OWNS THE TWO LINE POLES LOCATED ON THE PROPERTY OF COMPLAINT.

A. Respondent has admitted that it owns the primary wires, guy wire, stenciling and transformer. Also the testimony of Walter Thompson on pages 91, 95, 105, 106 of August 11, 2010, transcript, shows ownership.

B. Complainant has testified that for 43 years Respondent has trimmed trees, repaired tree damage, installed guy wire and guard, performed landscaping following repairs, taken fallen limbs off of wires, restored service and the like on the property of Complainant with no charges whatsoever to her at any time (see pages 134-136, 158, 161 of Beverly J. Carlson's testimony of August 11, 2010, transcript).

Witness, Arthur B. Carlson, testified in a similar fashion (see pages 101-113, 119-120 of Arthur B. Carlson's testimony of August 11, 2010, transcript).

These testimonies were not refuted by Respondent.

C. Respondent introduced no relevant testimony whatsoever that the poles belonged to Complainant. What it did introduce was a tariff dated 2008 and corresponding map from 1998 showing what they believed to be customer poles. Such a late dated tariff and map have no bearing on 1967-present, the dates of which refer to existence of the poles

D. Witness William Mueller states on pages 188-190 of the August 11, 2010 transcript that Respondent would never have installed guy wires nor done tree trimming and/or maintenance on customer poles. Witness Walter Thompson states that the stenciling on the cross arm of the pole identifies ComEd's equipment and could include identification of pole, (see page 95, 105 and 106 of August 11, 2010 transcript). These witnesses were for Respondent and are: A statement against interest, and are an implied admission that the poles in question belong to Respondent.

E. Respondent filed concurrently with the Evidentiary Hearing in this case, a Certificate of Compliance, stating among other things, that it supplied Complainant with everything in its possession with reference to request of documentation which included ownership of the poles in question (see pages 84 and 85 of Mark Goldstein's statements of August 11, 2010, transcript). It is therefore precluded at this late date from entering any further evidence that it also had in its possession and not presented to Complainant as a so called "late exhibit". The Court erred in allowing it to do so. Any such exhibit has no foundation laid and there is no opportunity for Complainant to cross examine.

In any event such late filing is a detriment to Respondent in the following particulars: Incorporated by reference is Complainant's Response to Commonwealth Edison Company's Late Filing of Exhibit "A" and Complainant's Response to Commonwealth Edison Company's Reply to Complainant's Response to Late Filing of Exhibit "A."

F. Respondent's Certificate of Compliance states in paragraph 6 that "all records of anyone who personally came to the property to make reports etc. have been submitted." Walter Thompson's testimony indicates on pages 99 and 100 of August 11, 2010, transcript that he prepared and submitted a report of his investigation and that it is customary for reports to be made and submitted. Respondent's failure to provide report/s constitute gross negligence and misrepresentation and willful and wanton misconduct.

G. Respondent's Certificate of Compliance states in paragraph 10 that "all history on the transformer including but not limited to maintenance, upgrades, inspections, safety checks and repairs since the installation in 1962 requested by the Complainant which are in the possession, custody, control, or knowledge of ComEd have been submitted." Walter Thompson's testimony indicates on page 200 of August 11, 2010, transcript. that records were found of the transformer installation in 1975. Respondent's failure to provide these records constitute gross negligence and misrepresentation and willful and wanton misconduct.

H.. Respondent's employee, Ned Flack made a visit to Complainant's property to inspect same and according to the transcript of April 17, 2010, page 66, line 3-6, indicates that an inspection was made and that Mr. Flack personally talked to Complainant. Mr. Flack, in fact, viewed the poles at a distance of 50 feet as testified by Complainant and never made contact with her as shown in the transcript of August 11, 2010, on pages 152 and 153. On pages 243 and 244 of August 11, 2010, testimony, Ned Flack indicates that he never made contact with Complainant and he advised Ken Richardson to tell Complainant of his

availability to meet. No one ever contacted Complainant. Respondent's testimony constitutes gross negligence and misrepresentation and willful and wanton misconduct.

I. Respondent's failure to provide Complainant with the name of the Respondent's employee who made the initial inspection, which was requested not only by Complainant on many occasions but by Administrative Law Judge Hayes (see page 72 of April 17, 2010 transcript) and reiterated on page 137 of August 11, 2010, transcript in Complainant's testimony, constitutes gross negligence and misrepresentation and willful and wanton misconduct.

J. On page 17 of the March 16, 2010, transcript, statements are entered indicating that Complainant was told that her poles were from 1946. In fact, the poles were not installed until 1962. These statements constitute gross negligence and misrepresentation and willful and wanton misconduct on the part of Respondent.

2. RESPONDENT HAS CREATED AND HAS ALLOWED TO EXIST A HAZARDOUS CONDITION UPON THE PROPERTY OF COMPLAINANT.

A. This agency must take Judicial Notice that a 7,200 volt wire may come into contact with the ground and those upon the ground by reason of any number of causes adversely affecting the poles which support such wires, such as falling trees, branches, weaknesses in the poles, storms and the like. Were such a fallen wire to come into contact with living flesh, a horrible death is virtually certain. Near proximity to said live wire will probably result in death or serious injury (see

testimony of Walter Thompson on pages 101 and 102 of August 11, 2010, transcript).

B. The situation described in the above paragraph is preventable. Respondent has the equipment, knowledge and expertise to remove the wires and transformer to an area outside of the property of Complainant. Indeed, Respondent offered to perform this service at the status hearing on March 16, 2010, for an unaffordable fee to Complainant of \$9,000.00. The fact that Respondent has not done so, (performed the above preventable situation), for the entire period during which it knew of the inherent dangerous existence, and which it was within its power to rectify, is unconscionable, and is such conduct as to shock a reasonable man.

C. On March 16, 2010, Respondent stated to Complainant that it will thereafter refuse to service Complainant.

D. The condition of the wire service installed and maintained by Respondent to Complainant, as expressed aforesaid, has resulted in a great detriment to Complainant.

E. Respondent has breached its contractual obligation to provide electric service to its customer in a safe manner and to supply reliable service essential to health, safety and welfare of citizens and to operate and maintain its facilities including equipment, apparatus, systems and property to prevent interruptions of service. Respondent failed to design its system according to generally accepted engineering practices including expected weather, animal and other conditions.

Respondent has breached its contractual obligation to provide electric service that reflects true system reliability without risks of future outages, indicated by

Respondent has been directed by a number of litigation to provide streaming service that is high speed and reliable. It has a policy of future investment in the **upgrade, condition, design and performance of transmission and distribution facilities and has failed to invest in the maintenance, repair, replacement and upgrade of facilities and equipment.**

VI

RELIEF SOUGHT

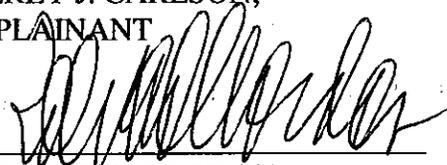
**COMPLAINANT IS ENTITLED TO AND THIS AGENCY HAS THE AUTHORITY TO
GRANT THE FOLLOWING RELIEF:**

1. That Respondent removes its wires and transformer to a place of its choosing not on the property of Complainant.
2. That Respondent does the same with the electric meter on the subject property.
3. That Respondent install and bury any and all wires needed to transport power from the meter to Complainant's electric service.
4. That Respondent reconnects the electric service so as Complainant has proper and working service.
5. That all work performed shall be done in a good and timely manner, and all costs and expenses, including but not limited to landscaping, shall be borne exclusively by Respondent with no cost whatsoever to Complainant.
6. That the period of electrical interruption necessary shall be kept at an absolute minimum.
7. That the Commission finds the actions and omissions of Respondent to be willful and wanton.
8. That the Commission grant penalties against Respondent for misrepresentations before the Commission

9. That the Commission award damages for the sake of example and by the way of punishment.
10. That the Commission fix reasonable attorney's fees in favor of the Complainant.
11. For such other relief as may be just and equitable.

Respectfully submitted:

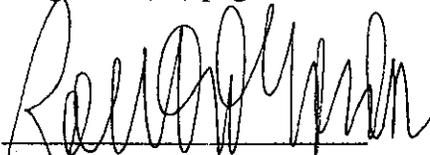
BEVERLY J. CARLSON,
COMPLAINANT

BY: 
ROBERT D. GORDON,
Her Attorney

ROBERT D. GORDON, ESQ.
ATTORNEY FOR COMPLAINANT
105 W. MADISON ST., SUITE 1002
CHICAGO, ILLINOIS 60602
312-236-0688

I CERTIFY THAT THIS Brief conforms to requirements of Rules 431(a) and (b).

The length of this brief, including this page, is eighteen (18) pages.



ROBERT D. GORDON

CERTIFICATE OF SERVICE

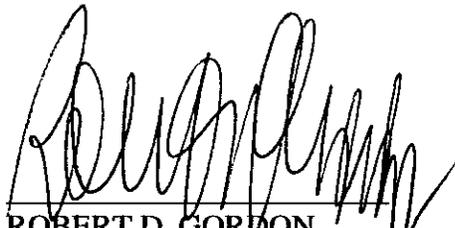
I hereby certify that on October 14, 2010, I served the above Brief of Complainant Closing Argument by delivering it to Administrative Law Judge Haynes and by US Mail, first class postage affixed, to Mark Goldstein, Ms. Elizabeth A. Rolando and Darryl Bradford.

Mark Goldstein, Atty.
3019 Province Circle
Mundelein, IL. 60060
Fax no. 847-566-6765

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

Thomas S. O'Neill
General Counsel Commonwealth Edison Company
440 S. LaSalle St., 33rd Fl.,
Chgo., IL. 60605

Administrative Law Judge Haynes
160 N. LaSalle St., #C-800
Chgo., IL. 60601



ROBERT D. GORDON

ROBERT D. GORDON
ATTORNEY FOR BEVERLY J. CARLSON
105 W. MADISON ST., SUITE 1002
CHICAGO, ILLINOIS 60602
312-236-0688