

**BEFORE THE ILLINOIS COMMERCE COMMISSION**

SVT, LLC d/b/a Ultra Foods                    )  
  )  
      Complainant,                                )  
  )  
v.    )     Case No.  
  )  
Commonwealth Edison Company                )  
  )  
      Respondent.                                )

**COMPLAINT**

NOW COMES the Complainant, SVT, LLC d/b/a ULTRA FOODS, by and through its attorneys, Lavelle Law, Ltd., and for its Complaint against Respondent, COMMONWEALTH EDISON COMPANY, states and alleges as follows:

**Jurisdictional Statement**

1. The Illinois Commerce Commission (“ICC”) has jurisdiction of this matter pursuant to Sections 4/5-101, 5/8-501, and 5/10-109 of the Illinois Public Utilities Act (the “Act”).
2. Pursuant to Title 83, section 200.100 of the Illinois Administrative Code, Complainant agrees to accept service by electronic means.

**Facts Common to All Counts**

3. SVT, LLC d/b/a Ultra Foods (“Ultra Foods”) is an Indiana limited liability company with its principal office located at 2244 45<sup>th</sup> Street, Highland, Indiana 46322.
4. Ultra Foods is authorized to conduct business in the State of Illinois.
5. Ultra Foods maintains a grocery store at 1212 75th Street, Downers Grove, DuPage County, Illinois.

6. Commonwealth Edison Company (“ComEd”) is an Illinois corporation whose corporate office is, on information and belief, located at 440 South LaSalle, Suite 3300, Chicago, Cook County, Illinois 60605.

7. ComEd is a “public utility” as that term is defined in Section 5/3-105(a) of the Act.

8. ComEd is a “jurisdictional entity” as that term is defined in Section 411.20 of the Illinois Administrative Code (the “Code”).

9. As a “public utility” and “jurisdictional entity,” ComEd is subject to the Act and rules promulgated thereunder and must comply with all provisions of the Act. 220 ILCS 5/1-102.

10. At approximately 9:30 a.m. on November 3, 2010, the electrical power went out at Ultra Foods, 1212 75<sup>th</sup> Street, Downers Grove, DuPage County, Illinois 60516 (the “Store”).

11. Upon realizing the power had gone out, Ultra Foods immediately contacted ComEd to effectuate the needed electrical repairs.

12. Ultra Foods was put on hold with ComEd for approximately one hour.

13. ComEd arrived at the store at approximately 1:00 p.m. on November 3, 2010, to effectuate the necessary repairs.

14. ComEd’s initial diagnosis of the problem was that there was a bad underground fuse to the transformer located at the back of the Store.

15. In order to determine which of three fuses was responsible for the outage, ComEd had to inspect all three fuses.

16. ComEd erroneously estimated it would take one hour to identify which fuse needed to be repaired.

17. ComEd also determined they would have to dig a hole in the alley behind the Store to get to the power line causing the problem.

18. ComEd erroneously estimated it would take between four and six hours to effectuate the necessary repairs.

19. Ultra Foods inquired as to the availability of a generator to operate the Store and was informed there were none available.

20. At this same time, ComEd also informed Ultra Foods that it would not be able to put Ultra Foods on temporary power because power would have to be pulled from other neighboring retailers.

21. At 2:15 p.m., on November 3, 2010, Ultra Foods closed the Store.

22. At 3:50 p.m. on November 3, 2010, ComEd's troubleshooter and heavy equipment arrived at the Store to commence repairs which Com Ed estimated would be completed by 9:30 p.m. on November 3, 2010.

23. At 4:00 p.m. on November 3, 2010, ComEd turned off all electrical power to the Store to begin repairs, leaving the Store to run on its own limited power generator.

24. At this same time, Ultra Foods brought in freezer trucks and dry ice in order to salvage as much of its frozen and refrigerated food products as possible.

25. After having some difficulties, ComEd advised Ultra Foods the contemplated repairs would not be completed until 11:00 p.m. on November 3, 2010.

26. At 12:00 a.m. on November 4, 2010, ComEd discovered they could not repair the underground cables because they were run through underground piping.

27. This discovery forced ComEd to dig another hole in the alley behind the Store at a location close to the primary transformer.

28. At 5:00 a.m. on November 4, 2010, the Store was finally put on temporary power.
29. At this time, the Store had been without electrical power for 19.5 hours.
30. At 7:00 a.m. on November 4, 2010, ComEd finished digging the second hole and indicated another crew would be out at 9:00 a.m. that day to complete the permanent repairs.
31. ComEd estimated the permanent repairs would take two hours to complete, during which time the Store would be taken off temporary power.
32. At 9:30 a.m. on November 4, 2010, ComEd's new crew was still undecided as to how to make the permanent repairs and gave Ultra Foods estimated completion times ranging anywhere from one to eight hours, during which time the Store would have no electrical power.
33. Once ComEd finally decided how to go about effectuating the permanent repairs, Ultra Foods was told the permanent repairs should be completed by 3:00 p.m. on November 4, 2010.
34. At 11:15 a.m. on November 4, 2010, ComEd took the Store off temporary power leaving the Store to again run on its own limited power generator.
35. ComEd then pulled out the bad cables, replaced them with new cables and put the Store back on temporary power.
36. At 3:10 p.m. on November 4, 2010, ComEd took the Store off temporary power and connected the Store to its permanent power.
37. Shortly after the Store was connected to permanent power a fuse blew in the primary transformer placing the Store back on its own limited power generator.
38. At 4:15 p.m. on November 4, 2010, ComEd put the Store back on temporary power yet again and began trying to figure out what caused the fuse to blow.

39. At 6:00 p.m. on November 4, 2010, ComEd's troubleshooter arrived at the Store to test the cable running from the primary transformer to the second hole dug by ComEd.

40. At 5:00 a.m. on November 5, 2010, ComEd returned to the Store and began digging a third hole in the alley behind the Store in an effort to resolve the current lack of electrical power issue.

41. Permanent power was not restored to the Store until approximately 5:00 p.m. on November 5, 2010.

42. Over the course of three days, the Store was without power for approximately 23.5 hours.

43. On December 3, 2010, Ultra Foods filed a claim form relating to the power outage at the Store with ComEd. *See "Claim Form" dated December 3, 2010, attached hereto as Exhibit A.*

44. On January 20, 2010, ComEd sent Michelle Tartaglia of Ultra Foods a letter denying its claim. *See Letter from Karen Whirity to Michelle Tartaglia dated January 20, 2011, attached hereto as Exhibit B.*

45. On February 10, 2011, ComEd sent another letter to Michelle Tarta of Ultra Foods disclaiming any liability to Ultra Foods pursuant to ComEd's tariff with the Commission. *See Letter from Melvin Hill to Michelle Tarta dated February 10, 2011, attached hereto as Exhibit C.*

46. On March 2, 2011, counsel for Ultra Foods initiated the informal complaint process with the Commission. *See "Informal Complaint Wizard" dated March 2, 2011, attached hereto as Exhibit D.*

47. On March 8, 2011, ComEd informed Ultra Foods' counsel that ComEd was disclaiming any liability to Ultra Foods in accordance with its February 20, 2011, letter.

**Count I**

**Violation of the Illinois Public Utilities Act and Rules Promulgated Thereunder**

48. Ultra Foods realleges and incorporates Paragraphs 1 through 47 as Paragraph 48 of Count I as though fully set forth herein.

49. Section 5/5-101 of the Act provides that "Every public utility shall obey and comply with each and every requirement of this Act and every order, decision, direction, rule or regulation made or prescribed by the Commission in the matters herein specified, or any other matter in any way relating to or affecting its business as a public utility . . . ."

50. Section 5/5-201 of the Act provides that "In case any public utility shall do, cause to be done or permit to be done any act, matter or thing prohibited, forbidden or declared to be unlawful, or shall omit to do any act, matter or thing required to be done either by any provisions of this Act or any rule, regulation, order or decision of the Commission, issued under authority of this Act, the public utility shall be liable to the persons or corporations affected thereby for all loss, damages or injury caused thereby or resulting therefrom, and if the court shall find that the act or omission was wilful, the court may in addition to the actual damages, award damages for the sake of example and by the way of punishment."

51. Section 5/5-201 of the Act further provides "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, which fee shall be taxed and collected as part of the costs in the case."

52. Section 5/8-101 of the Act provides that "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.”

53. Section 5/8-401 of the Act provides that “Every public utility subject to this Act shall provide service and facilities which are in all respects adequate, efficient, reliable and environmentally safe and which, consistent with these obligations, constitute the least-cost means of meeting the utility's service obligations.”

54. Section 411.100(a) of the Code provides that “Each jurisdictional entity shall provide services and facilities that, in accordance with the Act and other applicable statutes, provide an adequate, efficient and reasonable level of reliability giving appropriate consideration to the costs and benefits of changing or maintaining the level of reliability.”

55. Section 411.100(b) of the Code provides that “Each jurisdictional entity shall plan, design, construct, operate and maintain its facilities, including equipment, apparatus, systems, and property, to prevent controllable interruptions of service and to meet the requirements of this Part, consistent with the requirements in subsection (a).”

56. Section 411.100(b) of the Code further provides, “If such interruptions occur, the jurisdictional entity shall reestablish service as soon as it can and in a time consistent with general safety and public welfare.”

57. Section 411.100(c) of the Code provides that “Each jurisdictional entity shall adopt and implement procedures for restoration of transmission and distribution services to customers after an interruption on a non-discriminatory basis without regard to the identity of the provider of power and energy.”

58. Section 411.100(f) of the Code provides that “Each jurisdictional entity shall adopt and maintain appropriate operating procedures and reliability related administrative procedures.”

59. In violation of the Act and the Code, ComEd failed to:

- A. Furnish, provide, and maintain its service instrumentalities, equipment, and facilities to promote the safety, health, comfort, and convenience of Ultra Foods in an adequate, efficient, just and reasonable manner;
- B. Provide service and facilities to Ultra Foods which were in all respects adequate, efficient, and reliable;
- C. Design, construct, operate and maintain its facilities, including equipment, apparatus, systems, and property, to prevent controllable interruptions of Ultra Foods’ service;
- D. Reestablish Ultra Foods’ service as soon as it could; and
- E. Adopt and implement procedures for restoration of transmission and distribution services to its customers, including Ultra Foods, after an interruption on a non-discriminatory basis.

60. ComEd’s violations of the Act and the Code have damaged Ultra Foods in the sum of \$81,970.57.

NOW WHEREFORE, the Plaintiff, SVT, LLC d/b/a ULTRA FOODS prays that this Court enter judgment in its favor and against the Defendant, COMMONWEALTH EDISON COMPANY, in the sum of \$81,970.57 plus reasonable attorney’s fees and costs and for such other and further relief as this Court deems just and proper.

**Count II**  
**Negligence**

61. Ultra Foods realleges and incorporates by reference Paragraphs 1 through 47 as Paragraph 61 of Count II as though fully set forth herein.

62. Ultra Foods realleges and incorporates by reference Paragraphs 51 through 61 as Paragraph 64 of Count II as though fully set forth herein.

63. Pursuant to the Act and the Code, ComEd owed Ultra Foods a duty to be in compliance with the Act and the Code.

64. In breach of this duty to Ultra Foods, ComEd failed to:

- A. Furnish, provide, and maintain its service instrumentalities, equipment, and facilities to promote the safety, health, comfort, and convenience of Ultra Foods in an adequate, efficient, just and reasonable manner;
- B. Provide service and facilities to Ultra Foods which were in all respects adequate, efficient, and reliable;
- C. Design, construct, operate and maintain its facilities, including equipment, apparatus, systems, and property, to prevent controllable interruptions of Ultra Foods' service;
- D. Reestablish Ultra Foods' service as soon as it could; and
- E. Adopt and implement procedures for restoration of transmission and distribution services to its customers, including Ultra Foods, after an interruption on a non-discriminatory basis.

65. ComEd's breach of its duties to Ultra Foods was the proximate cause of Ultra Foods sustaining damages in the amount of \$81,970.57.



# **EXHIBIT A**



Commonwealth Edison Company  
 Claims Department  
 P.O. Box 767  
 Chicago, IL 60690-0767

**Claim Form**

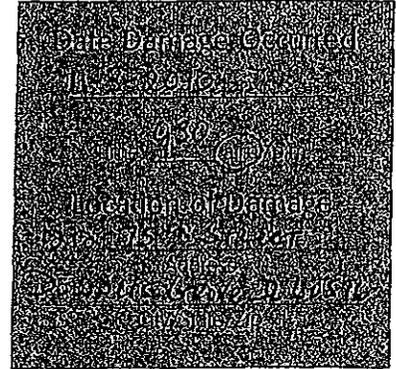
1-800-Edison-1  
 1-800-334-7661

1-800-95-LUCES  
 (1-800-955-8237)  
 (se habla español)

Please Print Legibly

(Use an additional sheet of paper if more space is needed.)

630-852-2700 Daytime Phone Number	Utica Foods Name
( ) Home Phone Number	1212 75th St. Address
Michelle Tartaglia Name of Contact Person (Units of Local Government Only)	Downers Grove, IL 60516 City State Zip
0788-39-4025- ComEd Account Number	 Social Security Number (Optional)



What happened? Power Outage due to a faulty underground fuse to the transformer.

Power Outage was 11-3-2010 9:30 am through 11-5-2010 5pm

THIS FORM IS FOR INFORMATION ONLY AND DOES NOT CONSTITUTE ANY ADMISSION OF LIABILITY ON THE PART OF COMMONWEALTH EDISON COMPANY. Return completed claim form and documentation to:

Commonwealth Edison Company  
 Claims Department  
 P.O. Box 767  
 Chicago, IL 60690-0767

**List of Damages**

Attach supporting documentation. If your claim is for repair to a vehicle, your documentation should include copies of estimates from two repair shops on their printed invoice or estimating form; we reserve the right to request an independent estimate. If your claim is for food spoilage, your documentation should include an itemized list of spoiled items shown with the price of each and the total for all items, and copies of receipts or canceled checks, if any. If your claim is for equipment or property repair, your documentation should include copies of bills paid to have the property repaired, or in the event that you choose not to have the property repaired, a copy of a written estimate of the cost that would have been incurred if the property had been repaired. If an item is not repairable, you should state that information and your documentation should include proof that a total loss of the property resulted. If your claim is for damage from a power interruption, power surge, or other fluctuation, your documentation should include proof that the damage resulted from such power interruption, power surge, or other fluctuation.

Item	Make/Model	Age	Date Purchased	Purchase Price	Repair or Replacement Cost	Serial No.
<u>Please see attached spreadsheet</u>						



The above information is true and correct to the best of my knowledge.

Michelle Tartaglia  
 Signature Date 12-3-2010

Store Manager  
 Title (Units of Local Government Only)

For Office Use Only

File Number \_\_\_\_\_ Claim Number \_\_\_\_\_ Adjuster \_\_\_\_\_ Region \_\_\_\_\_

# **EXHIBIT B**

January 20, 2011

ULTRA FOODS  
ATTN: MICHELLE TARTAGLIA  
1212 75TH ST  
DOWNERS GROVE, IL 60516

Re: Claim No. GCED2010231425

Dear Ms. Tartaglia:

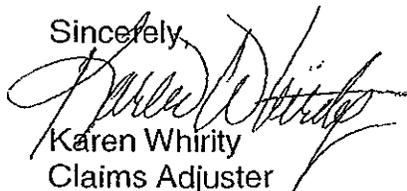
In response to your inquiry following the service irregularity of 11/3/2010, please be advised that we have carefully reviewed the relevant facts surrounding your complaint.

Our investigation has revealed that a cable failure was responsible for the events that followed. While ComEd deeply regrets the damage that resulted, we were unable to prevent this type of occurrence. Accordingly, we respectfully deny your claim.

We appreciate the opportunity to evaluate your claim. The Edison system is part of the environment and on any given day must face potential damage from storms, accidents, wind, ice, hail, vandalism, previous storm damaged components, tree or animal contact and a host of other potential hazards. There is no guarantee of absolute continuous service. Any damage resulting from breaks in service cannot be considered for payment.

Please accept our apology for any inconvenience and expense you may have experienced. Perhaps this letter may be of assistance to you if you should decide to file a claim with your insurance carrier.

Sincerely,



Karen Whirity  
Claims Adjuster  
(630) 576-6335

# EXHIBIT C

February 10, 2011

Michelle Tarta  
Ultra Foods  
1212 75TH ST  
Downers Grove, IL 60516

Re: Claim Number GCED2010231425

Dear Ms. Tarta

Your claim was submitted to the ComEd Claims Department Review Committee for further evaluation. We have reviewed the facts of your claim regarding problems on 11/03/2010.

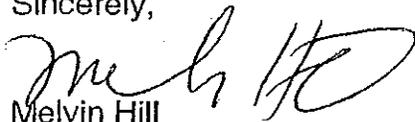
Our investigation has revealed that a cable failure was responsible for the events that followed. While ComEd deeply regrets the damage that resulted, we were unable to prevent this type of occurrence. Accordingly, we must deny any basis for a claim.

The fact that such occurrences can happen is one reason why ComEd's tariff, as approved by the Illinois Commerce Commission, states, in part, "The Company shall not be responsible in damages for any failure to supply electricity, or for interruption, or reversal of the supply, if such failure, interruption, or reversal is without willful default or negligence on its part, nor for interruptions by under frequency relays or otherwise, to preserve the integrity of the Company's system or interconnected systems."

Please accept our apology for any inconvenience and expense you may have experienced. Perhaps this letter may be of assistance to you if you should decide to file a claim with your insurance carrier.

On behalf of the Review Committee, we apologize for any inconvenience you may have experienced.

Sincerely,



Melvin Hill

ComEd Claims Department Review Committee  
(630) 576-6337

# **EXHIBIT D**

Illinois Commerce Commission

527 East Capitol Avenue, Springfield, Illinois, 62701

# Informal Complaint Wizard

## Illinois Commerce Commission Public Utility Complaint Form

### Complainant Information

Full Name:Lance Ziebell  
Street Address:501 West Colfax Street  
Alternate Location:  
City:Palatine  
State:Illinois  
ZipCode:60067  
Home Phone:  
Day-Time Phone:847-705-7555  
E-Mail Address:lziebell@lavellelaw.com

### Biling Address Information

First Name:Ultra  
Last Name:Foods  
Street Address:1212 75th Street  
Alternate Location:  
City:Downers Grove  
State:Illinois  
ZipCode:60516

### Complaint Information

Have you been in contact with the Utility?

Yes, I have contacted the utility.

Complaint Type: Electric

Company Name: Commonwealth Edison

Company Account Number: 0788394025

Please provide the details of your complaint or state your opinion:

Ultra Foods at 1212 75th Street, Downers Grove, Illinois, suffered a power outage due to the failure of an underground cable at 9:30 am on November 3, 2010. Commonwealth Edison did not appear to make repairs until 1:30 pm, November 3, 2010. Initially, ComEd informed Ultra Foods it would take 4-6 hours to effectuate repairs. At 4:00 PM, November 3, 2010, ComEd shut off all power to Ultra Foods and did not provide any generator or other form of electricity to the grocery store. This required the grocery store to bring in outside help to try and salvage its frozen goods. At 5 am on November 4, 2010, some 19.5 hours after losing power, Ultra Foods was put on temporary power. At 9:30 am, November 4, 2010, the next day, the store was still without power and ComEd was undecided as to how to effectuate repairs on the cable. They gave a new estimated repair time of 1 to 8 hours or no later than 3 PM on November 4, 2010. At 3:10 pm on November 4, 2010, permanent power to Ultra Foods was

restored, which led to the blowing of a fuse in the primary transformer. ComEd restored temporary power at 4:15 pm on November 4, 2010. Com Ed finally restored permanent power at 5 pm on November 5, 2010, some 2.5 days after Ultra Foods initially lost power. During the time ComEd was effectuating repairs, they dug 3 holes in an alley behind Ultra Foods in an attempt to discover the cause of the power outage. ComEd also failed to provide any power to the store for 19.5 hours beginning on November 3, 2010, and ending on November 4, 2010. This led to the store losing a vast majority of its frozen foods and incurring additional expenses in trying to preserve what items it could. The store's estimated losses are \$81,970.57, for which ComEd is, and should be held, liable. ComEd has failed to remedy this situation, instead attempting to hide its negligence behind its tariff with the Illinois Commerce Commission. Accordingly, ComEd denied Ultra Foods claim in a letter dated February 10, 2011, under claim number GCED2010231425. ComEd's failure to remedy this matter leads to this informal complaint.

[Previous](#)[Finish](#)

Illinois Commerce Commission  
527 East Capitol Avenue, Springfield, Illinois, 62701

# Informal Complaint Wizard

<b>Track Number</b>
0512-2011

Thank you for submitting your complaint.

[Print a Copy of Your Complaint](#)   [Return to ICC Website](#)

Illinois Commerce Commission

527 East Capitol Avenue, Springfield, Illinois, 62701

**Illinois Commerce Commission  
Public Utility Complaint Form  
Track Number: 0512-2011****Complainant Information**

Full Name: Lance Ziebell

Street Address: 501 West Colfax Street

Alternate Location:

City: Palatine

State: Illinois

ZipCode: 60067

Home Phone:

Day-Time Phone: 847-705-7555

E-Mail Address: lziebell@lavellelaw.com

**Billing Address Information**

First Name: Ultra

Last Name: Foods

Street Address: 1212 75th Street

Alternate Location:

City: Downers Grove

State: Illinois

ZipCode: 60516

**Complaint Information**

Have you been in contact with the Utility?

Yes, I have contacted the utility.

Complaint Type: Electric

Company Name: Commonwealth Edison

Company Account Number: 0788394025

Please provide the details of your complaint below:

Ultra Foods at 1212 75th Street, Downers Grove, Illinois, suffered a power outage due to the failure of an underground cable at 9:30 am on November 3, 2010. Commonwealth Edison did not appear to make repairs until 1:30 pm, November 3, 2010. Initially, ComEd informed Ultra Foods it would take 4-6 hours to effectuate repairs. At 4:00 PM, November 3, 2010, ComEd shut off all power to Ultra Foods and did not provide any generator or other form of electricity to the grocery store. This required the grocery store to bring in outside help to try and salvage its frozen goods. At 5 am on November 4, 2010, some 19.5 hours after losing power, Ultra Foods was put on temporary power. At 9:30 am,