

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
DU PAGE COUNTY, ILLINOIS

SVT, LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	NO. 11 L 359
	)	
COMMONWEALTH EDISON COMPANY.	)	
	)	
Defendant.	)	

FILED  
14 JUL 28 AM 10:31  
Clerk of Circuit Court  
DuPage County, Illinois

ORDER

SVT, LLC does business as Ultra Foods. It maintains grocery stores in DuPage County including one at 1212 75<sup>th</sup> Street, Downers Grove. (*Ultra Foods*). Commonwealth Edison is a public utility. (*ComEd*). It provides electricity. One of its customers is Ultra Foods.

On November 3, 2010 at about 9:30 a.m. the electrical power went out at the *Ultra Store*. *ComEd* was immediately contacted. Work crews from *ComEd* arrived at about 1:00 p.m. to effectuate the necessary repair to the power cable. They worked continuously until it was resolved. The problem was finally resolved at 5:00 p.m. on November 5, 2010.

The power outage caused by the cable failure resulted in the loss of frozen food and "additional expenses." SVT, LLC filed a two count complaint. The first count alleges provisions of the Illinois Public Utilities Act, 220 ILCS 5/1-102, were violated. It does not state how any provisions were violated which gives rise to a private cause of action in the Circuit Court. The second count alleges negligence.

A "tariff" is a public document that sets forth the services offered, the rates and charges for the services and the rules and regulations relating to those services. The *tariff* binds the utility *ComEd* and the consumer *Ultra* and governs their relationship. *Tariffs* limit the liability of public utilities.

UN-RECORDED

The tariff which governs the relationship between *ComEd* and *Ultra* does not require *ComEd* to provide uninterrupted electricity to *Ultra*. The *tariff* recognizes that service interruptions will occur. The *tariff* which governs the relationship between *ComEd* and *Ultra* also provides immunity from acts or omissions other than willful default or negligence.

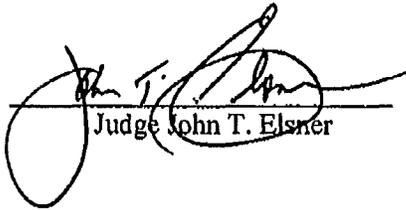
The Plaintiff recognizes that the interruption in services does not give rise to a cause of action. SVT, LLC tries to distinguish the time it took to repair the line as being a separate interruption in service. The Appellate Court has not found that there is a distinction between the "original" interruption in service and the time it took in continuously working on the repair. I find no distinction.

The facts alleged in this case allege interruption of service and the subsequent repair. The facts alleged do not state a violation of the Illinois Public Utilities Act, 220 ILCS 5/1- 102 et. Seq. Nor do the facts rise to the level of willful default or negligence. Since the facts alleged amount to a complaint for interruption of service and do not rise to the level of willful defaults or negligence, then the complaint does not state a cause of action.

The Complaint is dismissed with prejudice.

ENTER:

Dated: July 28, 2011

  
\_\_\_\_\_  
Judge John T. Elsner