

ORIGINAL

ILLINOIS COMMERCE COMMISSION

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STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION APR -4 P 1:11

AL BRUNSTING
Plaintiff,

CHIEF CLERK'S OFFICE

vs.

No. 11-0746

COMMONWEALTH EDISON COMPANY
Defendant.

**REPLY TO REPLY OF COMMONWEALTH EDISON COMPANY
IN SUPPORT OF ITS MOTION TO DISMISS**

Al Brunsting hereby submits this Reply to Reply of Commonwealth Edison Company in Support of Its Motion to Dismiss, pursuant to Section 200.190 of the Illinois Commerce Commission's ("ICC") Rules of Practice, 83 Illinois Administrative Code ("Rules") § 200.190.

I. SUMMARY

Let me summarize what I see are the relevant issues for ICC consideration in this case:

- A. Unsafe power delivery did occur, which was nearly fatal.
- B. There is no known record (that I am aware of) that ComEd reported this incident to the ICC as required by "Public Utilities Act Section 8-507. [Report and investigation of accidents]." If this is accurate, ComEd failed to do what they are required by law to do.
- C. ComEd has claimed to the ICC (Reference ComEd's document URD 1.02) that "The technical problems detailed in ComEd's Response to Staff Data Request URD 1.01 were unique to the Customer and ComEd equipment at this location. It is not believed that these particular circumstances are likely to be duplicated throughout ComEd's service territory." ComEd's own report (URD 1.02) shows that these technical problems were not unique. ComEd gives no quantifiable and no verifiable evidence that these technical problems might be "duplicated throughout ComEd's service territory." Does the ICC

choose to rely on ComEd's unsubstantiated assertion of uniqueness and ComEd's proposal to do nothing about the causes of this event?

- D. I have shown that technology is likely to be available to ComEd that could have detected that our transformer was near failure. Assume that the routine maintenance on our transformer was not deferred (as it apparently was deferred for many of the transformers associated with outages that adversely affected some of the 800,000 ComEd customers this past summer, according the Illinois Attorney General's office). We know that our transformer failed from the Naperville Fire Department ("NFD") report. I submit that the ICC would want to know the answer to this question: If such technology was available, was ComEd applying it in a manner that substantially improves safe power delivery?
- E. "The ICC's mission is to pursue an appropriate balance between the interest of consumers and existing and emerging service providers to ensure the provision of adequate, efficient, reliable, safe and least-cost public utility services." This case represents a significant opportunity for the ICC to fulfill its mission.
- F. This case is about safe power delivery for all of ComEd customers and my Circuit Court case is about specific damages and therefore separable from this matter now before the ICC.

II. INTRODUCTION

This reply conforms to Rules § 200.190e as I read them.

III. ARGUMENT

I take issue with all the major arguments in the related ComEd document as detailed below.

- A. This Proceeding is NOT Substantially Similar to the Circuit Court Proceeding.

ComEd argues that this proceeding and the Circuit Court proceeding have the same cause. I claim that they do not have a common cause for the following two reasons:

1. On page 3 of my original formal complaint I wrote “On Dec. 17, 2009, about 6:15am, a very damaging electrical fire started in our home (total damage was \$120,000).

Simultaneously there was a similar electrical fire at the home of our backyard neighbor.

There were other simultaneous electrical power delivery problems and electrical power outages in at least five other nearby homes. All of these electrical power delivery

problems in our neighborhood were simultaneously experienced by ComEd customers.”

This complaint involves the collection of unsafe power delivery problems, not just our fire. Therefore, this proceeding is substantially different than the Circuit Court proceeding.

2. I claim that ComEd has never explained the cause of this simultaneous collection of events in a manner that is consistent with all known facts (not in dispute to my knowledge), in a manner that is consistent with the NFD report, in a manner that is consistent with the Home Owner’s minutes (approved by ComEd), and in a manner is internally consistent to ComEd’s own documents. ComEd has attempted such an explanation on two separate occasions (detailed in “AL BRUNSTING’S MOTION TO NOT DISMISS OR STAY”, Attachment B) and it is my view that ComEd has failed on both occasions. Furthermore, ComEd has not answered my criticisms of these explanations. Therefore, it is not known what the cause is, except possibly by ComEd, which they have not shared with the outside world (to my knowledge). Therefore, the word “cause” has not been defined adequately and therefore we cannot say if this

proceeding has the same “cause” as the Circuit Court proceeding. It follows then, that this ComEd argument (IIA) is not valid.

B. I Disagree that My Additional Allegations Are Without Merit and Unresponsive.

(Reference 1st paragraph of “REPLY OF COMMONWEALTH EDISON COMPANY IN SUPPORT OF ITS MOTION TO DISMISS page 4, “First”) “It is unclear what right or remedy Mr. Brunsting is asserting; indeed, it is unclear to what ‘testimony’ he is referring.” This case is (1) about the “collection of unsafe power delivery problems” (see IIA1 above) and (2) about the possibility that these alleged unsafe problems might extend to others within the 3.8 million ComEd customer base. Obviously, I do not have the necessary technical information to establish these links. ComEd has been either unresponsive to associated requests or has produced two documents that are unsatisfactory in my opinion. It is my view that the essential questions for the ICC are these: “How do we know there is no connection between Docket Nos. 11-0746 and 11-0588, such as deferred maintenance on ComEd equipment? Where is the independent and verifiable technical information to support such a separation?”

(Reference “Second”, ComEd’s “REPLY...”, page 4) I have clearly stated why these two documents are inadequate in “Attachment B” of “AL BRUNSTING’S MOTION TO NOT DISMISS OR STAY”. Here’s my question to the ICC: “Do you really want to dismiss this formal complaint and risk that the issues raised in Attachment B (my motion not to dismiss) are legitimate, regarding safe power delivery?”

(Reference “Lastly”, ComEd’s “REPLY...”, page 5) Here’s what I wrote on page 3 (see IIe) of my motion not to dismiss: “I have a Ph.D. in physics and have spent my entire career in this discipline. I have 15 patents and 39 papers published in the refereed technical and scientific literature. While not an electrical power engineer this education and experience implies that,

given adequate technical information, I am capable of comprehending the power delivery issues in this case.” It seems to me that these words speak for themselves. Nevertheless, my intention was to communicate that given adequate technical information I am confident that I can comprehend the relevant power delivery issues of this case. If my words implied otherwise, I apologize.

C. Claim for Damages.

(Reference 1st paragraph, ComEd’s “REPLY...”, page 5) My claim for damages was deleted in my email of March 02, 2012, “ICC E-Docket 11-0746, suggestion for resolution” to the Administrative Law Judge & copied to the service list. My proposal in that email was made to delete our claim for monetary damages in exchange for ComEd agreeing to the following (final details to be agreed upon):

- ComEd replaces their reports URD 1.01 and 1.02 with a refereed written report that is consistent with all established facts of this case, which are not in dispute to my knowledge.
- This replacement report addresses all relevant causes and origins for our fire and what ComEd did to ameliorate unsafe power delivery in our subdivision and, where applicable, unsafe power delivery throughout their service area. This is essentially the same request John Stutsman (jstutsma@icc.illinois.gov) made to ComEd in his email “Docket No. 11-0746 -- Staff 1st Data Request Attached” (Dec. 16, '11, 12:25 PM)
- This replacement report will have a deadline of one month from the time we withdraw our formal complaint. There will be significant financial penalties for ComEd to the ICC, if the report is produced after the deadline (to be determined).

- A recognized expert in the power delivery industry and not connected in any way with ComEd will examine and referee the replacement report for technical accuracy, agreement with all established facts of this case, consistency with accepted practices in the power distribution industry, and relevancy with the goal of safer power delivery within the ComEd service area. My suggestion for this expert is George Owens who (my understanding) is currently working with Susan L. Satter, Senior Assistant Attorney General, on ICC formal complaint Docket No. 11-0588. The expert will pass judgment on whether or not ComEd's replacement report satisfies the criteria and whether or not financial penalties apply.
- The expense for this expert referee will be borne by ComEd.
- I want an opportunity to review ComEd's replacement report and make comments directly to the expert before that expert passes judgment on the report (no cost to ComEd).
- The acceptable ComEd replacement report is immediately made available to the public and the press, possibly on the ICC website, so that all customers of the ComEd monopoly might have more piece of mind, regarding safe power delivery.

ComEd has had two opportunities to explain what happened, regarding our ComEd caused fire (1) at our home owners meeting of Feb. 13, '10 (captured in the ComEd approved minutes) and (2) in their ICC requested reports URD 1.01 and 1.02. It is my conclusion that in both cases ComEd's explanations were inadequate, were in disagreement with the known facts, and do not translate into safer power delivery (as detailed in my Attachment B of "Al Brunsting's Motion to not dismiss or Stay").

Therefore, we are not seeking monetary relief and it would seem that ComEd's objection in their IIC is not applicable to this case. ComEd has our suggestion for resolution of this case and remains unresponsive.

(Reference 1st full paragraph, ComEd's "REPLY...", page 6) "Mr. Brunsting... does not raise service quality issues". This ComEd statement is obviously false as I read it. Here's what I wrote in my formal complaint:

ComEd has admitted that they are the cause and origin of these fires and electrical power problems [see ComEd story in Trib.pdf & Relevant communications.pdf on accompanying CD "ICC/Brunsting Formal Complaint"].

This statement clearly raises "service quality issues". There are multiple additional references in my formal complaint and in my motion "AL BRUNSTING'S MOTION TO NOT DISMISS OR STAY" where service quality issues are raised. If necessary, I will detail them. Therefore, I claim I have raised "service quality issues" several times.

(Reference last paragraph, ComEd's "REPLY...", page 6) "... tangible damages."

Please see Section C above, 1st paragraph and associated bullet points.

Respectfully submitted,

A handwritten signature in cursive script that reads "Al Brunsting". The signature is written in black ink and is positioned above a horizontal line.

Al Brunsting
April 3, 2012

CERTIFICATE OF SERVICE

I, Al Brunsting, certify that on April 3, 2012, I served a copy of the foregoing Reply by electronic mail to the individuals on the Commission's Service List for Docket 11-0746.

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