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2012 SEP -4 A 11: 27

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STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Valji Patel	)	
for Splash Graphics, Inc.	)	
v.	)	**12-0473**
Commonwealth Edison Company	)	
	)	
Complaint as to	)	
Repair service previously done	)	
by ComEd in Riverside, Illinois.	)	

COMMONWEALTH EDISON COMPANY'S VERIFIED MOTION TO DISMISS

Commonwealth Edison Company ("ComEd") by its counsel, Mark L. Goldstein, moves to dismiss the Complaint pursuant to Section 200.190 of the Rules of Practice of the Illinois Commerce Commission ("Commission"), 83 Illinois Administrative Code 200.90 and Section 735 ILCS 5/2-615 and 5/2-619 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-615, 735 ILCS 5/2-619.

Background

Splash Graphics, Inc. ("Splash") operates at 7001 S. Adams Street, Willowbrook, IL 60527. On or about October 24, 2011, it sent a Claim Form, attached and incorporated hereto as Attachment A, to ComEd alleging a "power problem" which damaged its fifteen (15) year old HVAC system. Splash replaced its HVAC with a newer model, but received an estimate for a repair of the existing system in the amount of $4,875.00. Splash claimed $4,875.00 as the cost to repair the HVAC. ComEd Claims Department denied the claim.

On August 9, 2012 Splash filed a Formal Complaint alleging the reason for the complaint as "failure of splice from previously done ComEd repair work." The Complaint and its attachments suggest in February 2011 a truck hit "the electrical pole"

and that a "ComEd service team" repaired and restore service. The Complaint further alleges that in August 2011, wires "came down" from the pole which caused "some spike in electrical supply, smoked some of the equipments & one of the HVAC got shot." Finally, the Complaint concludes "ComEd did very poor job on ...fixing the wires...service team did not splice wires properly & that's the reason wires came down on 8/11/2012."

Legal Standard

As outlined in Illinois Administrative Code Rules of Practice section 200.190(a) and Section 5/2-615 and 5/2-619 of Illinois Code of Civil Procedure, a party may file a motion to dismiss. In order for a complaint to survive a Motion to Dismiss it, must allege facts to support essential elements of cause of action. *Gore v Indiana Ins. Co.*, 376 Ill. App3d 282, 285 (1st Dist. 2007).

The court must take all reasonable inferences from well-pled facts as true, disregard all conclusory allegations, and construe the evidence strictly against the movant. *Parkway Bank and Trust Co. v. Meselijevic,* 406 Ill.App.3d 435, 442 (1st Dist.) (2010). A complainant cannot rely on conclusions of fact or law unsupported by factual allegations. *Gore v Indiana Ins. Co.*, 376 Ill. App3d 282, 285 (1st Dist. 2007). Because Illinois is a fact pleading jurisdiction, a complainant must allege facts sufficient to bring its claim within the scope of the cause of action asserted. *Turner v. Memorial Medical Center,* 233 Ill.2d 494 (2009).

Argument

The Complaint fails on its face. It is not properly please as required under Illinois law, as it states no cause of action and only generally alludes to some sort of wrong doing

on the part of a "service team." There are no well-pled facts. Indeed the Complaint does not even contain a request for relief, other than a vague title on one of the attachments indicating damage to HVAC system. Rather than factually allege any wrongdoing on the part of ComEd, the Complainant only draws the conclusion that "service team did not splice wires properly and that's the reasons wires came down on 08/11/2012. For this reason alone, the Complaint should be dismissed.

Even assuming arguendo, that a claim or cause of action is somehow found within the Complaint, under Illinois law, the Public Utilities Act and ComEd tariff, liability is limited unless there is proof of willful default or negligence. Splash alleges none of the elements of willful default or negligence. Indeed, nothing is outlined as to what duty Com have had to Splash, that it breached that duty, or that that breach of duty was the cause of damage to Splash.

A tariff is a public document setting forth services being offered; rates and charges with respect to services; and governing rules, regulations, and practices relating to those services. *Adams v. Northern Illinois Gas Company*, 211 Ill. 2d 32, 55 (2004), *citing North River Insurance Co. v. Jones*, 275 Ill. App. 3d 175, 185 (1995).

Tariffs are also referred to as liability limitations. This is because public utilities are regulated monopolies whose operations are subject to extensive restrictions, the requirements of uniform, nondiscriminatory rates, and the goal of universal service, achieved through the preservation of utility prices that virtually all customers can afford. Such limitations have been consistently upheld by Illinois courts, the Illinois legislature, and the Commission for decades and have expressly been found not to contravene public policy. *See: Adams*, 211 Ill. 2d 32; *Illinois Bell Switching Station Lit.*, 161 Ill. 2d 233.

The Commonwealth Edison Tariff recognizes that service interruptions and other disruptions will occur; ComEd's approved tariffs therefore expressly limit its liability for service disruptions to instances of willful default or negligence. ILL. C. C. No. 10, 2nd Rev. Sheet No. 152; ILL. C. C. No. 10, 2nd Rev. Sheet No. 203, Attachments B and C, respectively, attached hereto. They also limit the liability that can be imposed. *See In re Illinois Bell Switching Station Litigation*, 161 Ill. 2d 233, 243, 641 N.E.2d 440, 445 (1994) (the Illinois Supreme Court held that "[a]dequate, efficient and reliable service is not tantamount to infallible service.")

Splash does not, and cannot, allege that ComEd violated its obligations under its tariff or the Public Utilities Ace, and Complaint provides no facts to support the allegation that ComEd failed to fulfill some duty.

For these reasons, Commonwealth Edison Company respectfully request that the Illinois Commerce Commission grant its Motion to Dismiss with Prejudice the Complaint filed by Valji Patel for Splash Graphics, Inc. on August 9, 2012.

Respectfully submitted,
Commonwealth Edison Company

By: _____
Mark L. Goldstein, Its Attorney

Mark L. Goldstein
Attorney for Respondent
3019 Province Circle
Mundelein, IL 60060
(847) 949-1340

VERIFICATION

I, Erin Buechler, being first duly sworn on oath, states that I am a Senior Regulatory Specialist for Commonwealth Edison Company, and I have read the foregoing Verified Motion to Dismiss Complaint, know the contents thereof, and that same are true and correct to the best of my information and belief.

Erin Buechler

Subscribed and Sworn to before me
this 30 day of August, 2012.

Mamie Takagi
Notary Public

"OFFICIAL SEAL"
Mamie Takagi
Notary Public, State of Illinois
My Commission Expires 6/6/2016

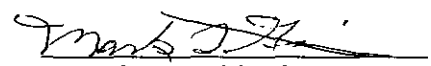
CERTIFICATE OF SERVICE

I certify that on August 31, 2012, I served the foregoing Respondent's Motion to Dismiss by causing a copy of same 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

Mr. Valji Patel
Splash Graphics, Inc.
7001 S. Adams Street
Willowbrook, IL 60527

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



Mark L. Goldstein