

S. Goreczny, )  
-vs- )  
Commonwealth Edison Company ) No. 12-0099  
)  
Complaint as to non-emergency )  
Vegetation management activities in )  
Bolingbrook, Illinois )

CHIEF CLERK'S OFFICE

**COMPLAINANT'S RESPONSE TO MOTION TO DISMISS**

NOW COMES the Complainant, S. GORECZNY, and in response to the Motion to Dismiss Formal Complaint, filed herein by Commonwealth Edison Company ("ComEd"), states as follows:

ComEd seeks to dismiss the Formal Complaint filed relative to ComEd's intent to trim a maple tree situated on Complainant's property. ComEd alleges that its vegetation management policies are reasonable and that the required notice of its intent to trim the tree was provided to Complainant.

It is Complainant's position that the required notice was not provided and the vegetation management policy is unreasonable for the reasons set forth below.

**ComEd's Clearance Criteria Are Unreasonable and Far Exceed the Regulatory Requirements**

ComEd alleges that its vegetation management policy is reasonable because it complies with the regulatory requirements set forth under the FERC approved NERC Reliability Standard FAC-003-1. The Complainant acknowledges the applicability of said Standard to ComEd's vegetation management policies. However, this Standard only establishes a minimum clearance which must be maintained between vegetation and transmission lines. The Standard does not

dictate how the transmission line owner must comply or whether the compliance efforts exceed the minimum clearances required. It is Complainant's position that ComEd's vegetation management policy far exceeds the minimum clearance requirements and is therefore unreasonable.

Reliability Standard FAC-003-1 sets forth two separate Clearance requirements. The Clearance 2 standards applicable in this matter requires a minimum 7.5 feet clearance which must always be maintained between the transmission lines and nearby vegetation. It is the Clearance 1 Standards that are less defined, more subjective and at issue in this proceeding.

Clearance 1 Standards require a greater clearance than the minimum Clearance 2 Standards taking into account several factors. As stated by ComEd in its Motion to Dismiss, the transmission line owner is to consider the period of time between trimming activities along with local conditions. According to the policies of ComEd, VM-ED-P001-4 and VM-ED-1006-1, and as set forth in its Motion, the time period between trimming activities is five years and the only local condition considered is the "average tree growth in the region" and "conductor movement." Assuming *arguendo* that ComEd has correctly determined the potential side swaying of these lines, i.e. the "conductor movement", to be 13.4 feet, ComEd has determined that it needs a minimum 35 feet clearance between these transmission lines and nearby vegetation. ComEd arrived at this clearance by adding 10 feet for "average tree growth" plus 4 feet for "engineering judgment" to the 7.5 feet Clearance 2 standards and 13.4 feet conductor movement.

ComEd fails to consider any of the other local conditions specified in FAC-003-1 such as "reasonably anticipated tree...movement, species types and growth rates, species failure characteristics, local climate and rainfall patterns, line terrain and elevation, and location of the vegetation within the span". Based upon only "average tree growth" and "conductor movement",

ComEd subjectively added 14 feet of required clearance. According to the measurements taken by ComEd, the Complainant's maple tree is 26 feet from the transmission line, which is farther than the minimum total Clearance 2 standard of 7.5 feet and potential conductor movement of 13.4 feet. ComEd has not considered the species type and growth rates, the maple trees failure characteristics, local climate and rainfall patterns.

As set forth in Reliability Standard FAC-003-01, Transmission line owners are required to create an annual plan for vegetation management. Section B, R2 of the Standard specifically states that "The plan should be flexible enough to adjust to changing conditions, taking into consideration anticipated growth of vegetation and all other environmental factors that may have an impact on the reliability of the transmission systems." It is Complainant's position that ComEd's focus on only two of the numerous factors to be considered in determining Clearance 1 standards is not justified. The Complainant's maple tree may never encroach any closer to the transmission lines. Without consideration of the additional local conditions listed in the Reliability Standard, ComEd's required clearance is excessive and therefore unreasonable and an infringement on the rights of the property owner.

#### **ComEd Failed to Provide Complainant the Notice Required by Law**

ComEd alleges that it did provide the required notice to Complainant of its intent to conduct vegetation management in the area and specifically of its intent to trim Complainant's maple tree.

Section 8-505.1 of the Public Utilities Act sets forth the requirement of notice to property owners for non-emergency vegetation management activities. Not only does the Statute require direct notice to the property owner and a published notice to all affected property owners

between a 21 to 90 day time period before activities are to begin, but paragraph (a)(3) also specifies the information that must be contained in the notice:

“The electric public utility giving the direct and published notices required in subsection (a)(2) shall provide notified customers and property owners with (i) a statement of the vegetation management activities planned, (ii) the address of a website and a toll-free telephone number at which a written disclosure of all dispute resolution opportunities and processes, rights and remedies provided by the electric public utility may be obtained, (iii) a statement that the customer and the property owner may appeal the planned vegetation management activities through the electric company and the Illinois Commerce Commission, (iv) a toll-free telephone number through which communication may be had with a representative of the electric public utility regarding vegetation management activities, and (v) the telephone number of the Consumer Affairs Officer of the Illinois Commerce Commission.

The only notice provided to Complainant was a card posted on Complainant’s front door on November 23, 2011 by ComEd of intents to trim. A copy of this notice is attached as Exhibit A. Upon finding the notice, Complainant contacted ComEd and was informed that the tree trimming would take place on December 6, 2011. The notice was not provided 21 days prior to the trimming activity nor does it satisfy the above statutory requirements as to dispute resolution, right to appeal, or ICC information. Additionally, ComEd failed to provide the required publication notice.

Complainant is unaware of any notice provided to any affected homeowners, whose property abuts this ComEd right of way, of ComEd’s vegetation management policies and its 35 feet clearance requirement. ComEd’s failure to publicize this clearance requirement infringes upon the property rights of the affected homeowners and prevents the homeowner from being proactive with their landscaping plans and not plant any vegetation which may encroach upon the established clearance requirement. Section 8-505.1 of the Public Utility Act specifically states that “Vegetation management activities by an electric public utility shall not alter, trespass upon, or limit the rights of any property owner.”

For the reasons stated above, the Motion to Dismiss should be denied.

Respectfully submitted,

By: *S. Goreczny*  
Complainant, S. Goreczny

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