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**Daniel Watson and** )  
**RWE Management Co.** )  
**-vs-** )  
**Commonwealth Edison Company** )  
 )  
**Complaint as to installation of** )  
**Unnecessary switch to de-energize** )  
**Electrical lines during construction** )  
**in Wheaton, Illinois.** )

**No. 11-0790**

**RESPONDENT'S INITIAL BRIEF**

Now comes the Respondent, Commonwealth Edison Company ("Respondent" or "ComEd"), by and through its attorney, Mark L. Goldstein, and files its Initial Brief ("Response").

**Background**

On December 20, 2011, Daniel Watson ("Complainant" or "Watson") filed a formal complaint alleging ComEd unnecessarily installed a switch to de-energize electrical lines during construction. Complainant seeks recovery of the cost to install the switch in the amount of \$8, 404.29. Watson is employed by RWE Management Co. ("RWE").

Complainant purchased property located at 1010 College Ave, Wheaton, Illinois, sometime in 2008. The property is situated such that there is a utility pole at the southeast corner of the property. The utility pole is located in the right-of-way, near the alley. Electrical lines run parallel to the property and to the alley behind the property.

In 2008, Complainant contacted ComEd to notify it that Complainant intended to begin new construction. In August 2008, ComEd preformed an initial field visit. At that time, Complainant did not provide ComEd with construction plans.

In May 2009, construction plans were made available to ComEd and indicated that the new construction would extend within one foot of the property line, thereby making the clearance between the building and the electrical lines non-compliant with acceptable National Electrical Safety Code (“NESC”) standards. In September 2009, Complainant began construction at the property. As construction continued, ComEd relocated the lines at no cost to the customer. However, the relocation of the lines could not and did not meet Occupational Safety and Health Administration (“OSHA”) safe body clearance standards, so ComEd installed a switch to de-energize the lines at cost to the Complainant. In December 2009, Complainant RWE signed a customer work agreement with ComEd to install the switch for a total customer charge of \$8,404.29.

### **Clearance Standards**

OSHA Selection and Use of Work Practices Part 29 CFR 1910.333 details the standard for safe-body clearance when working near electric equipment. Only qualified persons may work near such equipment that has not been de-energized. However, when unqualified persons are working near electrical overhead lines, such as in this case, the “longest conductive object...cannot come closer” than ten (10) feet from the overhead conductor. See 29 CFR 1910.333(c)(3)(i)(B), ComEd Exhibit 3.

ComEd construction standards are based on the NESC clearance standards as required by the ICC. NESC clearance requirements are composed of a vertical and horizontal clearance standard. In this case, the vertical clearance for a 12 kV line over a roof which is not accessible to foot traffic is twelve (12) feet, six (6) inches. The horizontal clearance is seven (7) feet, six (6) inches. Neutral lines have similar standards for both vertical and horizontal clearances. In this case, the vertical clearance is three (3)

feet, sic (6) inches. The horizontal clearance is five (5) feet. See ComEd System Standard Clearances pp. 8-9, ComEd Exhibit 4.

**Argument**

Complainant has the burden of proof in order to prevail on the Formal Complaint. In summary, the Complainant alleges ComEd charged him for unnecessary equipment. Complainant submitted no evidence of wrongdoing or error by ComEd.

Indeed, Complainant Watson never met with the ComEd engineer during her field visit; rather it was another representative from RWE, not present at the evidentiary hearing. See El-Tigani Testimony Tr. 46, Lines 6-7. Although he testified as to how he believes the lines should have been relocated, other options ComEd might have had, and assumptions about ComEd's work, none of that information substantiates claims that the switch was unnecessary. See Watson Testimony, Tr. 17, Lines 9-15; pp. 22, Lines 6-14. Moreover, Complainant's testimony was rebutted by ComEd witnesses. In fact, Complainant was under the assumption that ComEd did eventually move the lines to the 10 foot OSHA clearance, which is not true. See Watson Testimony, Tr. 22, Lines 18-21. ComEd relocated the line to 7.5 foot NESC standard which is current clearance as well. See El-Tigani Testimony Tr. 59, Lines 5-10.

As explained by ComEd engineer, Yasmin El-Tigani, ComEd must apply certain standards and practices when it develops plans for relocations of various facilities, including electrical lines as in this case. See El-Tigani Testimony Tr. 77, Lines 18-22. ComEd could not move the lines to meet the 10 foot OSHA clearance; that was not an option nor ever presented to the Complainant as an option. See El-Tigani Testimony Tr. 79, Lines 7-12.

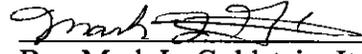
In 2008, ComEd engineer met with Complainant RWE to discuss proper NESC clearance regulations, there was no discussion of safe body clearances at the initial meeting. El-Tigani Testimony Tr. 47, Lines 4-8. Once plans were submitted to ComEd and the appropriate departments notified, ComEd had no other option but to move the line to meet NESC standards and install the switch as construction personnel would be too close to the existing lines. See El-Tigani Testimony Tr. 48-51. ComEd could not relocate the pole, because it is located in the right-of-way of an alley which serves a driveway to Wheaton station. Indeed, as the property sits today, the lines only meet NESC building standards of 7.5 feet, not OSHA safe-body clearances. See El-Tigani Testimony Tr. 59, Lines 5-10.

**Conclusion**

Complainant provided no evidence or testimony to support his complaint which alleged ComEd unnecessarily installed a switch to de-energize the electric line near his property. When the ComEd engineer completed the field visit, there were no construction plans from Complainant. Once plans were finally submitted and construction commenced, ComEd designed the only available fix such that the lines would be relocated to meet NESC standards and a switch installed to de-energize the lines. There were no other options. Today, as in 2010, the line clearance is at 7.5 feet to meet NESC standards not the OSHA safe-body clearance of 10 feet. Due to Complainant's failure to meet the burden of proof, the Complaint must be denied.

WHEREFORE, ComEd respectfully requests this honorable court deny the Complaint and enter the attached Proposed Order.

Respectfully submitted,  
Commonwealth Edison Company

  
By: Mark L. Goldstein, Its Attorney

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**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

<b>Daniel Watson and RWE Management Co.</b>	)	
<b>-vs-</b>	)	<b>11-0790</b>
<b>Commonwealth Edison Company</b>	)	
	)	
<b>Complaint as to installation of Unnecessary</b>	)	
<b>switch to de-energize Electrical lines during</b>	)	
<b>construction in Wheaton, Illinois.</b>	)	

**NOTICE OF FILING**

TO: Parties on Certificate of Service

PLEASE TAKE NOTICE that on September 24, 2012, I filed with the Chief Clerk of the Illinois Commerce Commission Respondent's Initial Brief and Proposed Order copies of which is attached hereto, and are hereby served upon you.



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Attorney for Respondent  
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**CERTIFICATE OF SERVICE**

I hereby certify that on September 24, 2012, I served copies of the attached Respondent's Initial Brief and Proposed Order in the above-captioned docket, by causing a copy thereof to be placed in the U.S. Mail, first class postage affixed, addressed to each of the parties below:

Ms. Elizabeth A. Rolando  
Chief Clerk  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 62701

Mr. Daniel Watson  
1010 College Ave.  
Wheaton, IL 60187

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

  
Mark L. Goldstein