

2012 SEP 26 1 A 11: 14

Daniel Watson and)
RWE Management Co.) No. 11-0790
-vs-)
Commonwealth Edison Company)
)
Complaint as to installation of)
Unnecessary switch to de-energize)
Electrical lines during construction)
in Wheaton, Illinois.)

CHIEF CLERK'S OFFICE

PROPOSED ORDER

By the Commission:

I. Procedural Background

On December 20, 2011, pursuant to Section 10-108 of the Illinois Public Utilities Act (220 ILC 5/10-108) ("the Act"), Daniel Watson and RWE Management Co. ("Complainant" or "RWE") filed a complaint against Commonwealth Edison Company ("Respondent" or "ComEd") alleging that Respondent installed an unnecessary switch to de-energize the electrical lines running along the property line, near the construction site, during construction. Complainant alleges that it paid ComEd \$8,404.29 to de-energize the electrical lines so construction could commence. Complainant seeks recovery of the \$8,404.29.

Pursuant to notice given in accordance with the law and the rules of the Commission, this matter came on for hearing on August 29, 2012. At the close of the hearing the record was held open for parties to file Brief in Support and Draft Proposed Order. Subsequently, a Proposed Order was served on the parties on _____.

II. Complainant's Evidence

At the hearing on August 29, 2012, Complainant Daniel Watson testified on his behalf and on behalf of RWE. Complainant owns property located at 1010 College Ave, Wheaton, IL 60187. The rear of the property runs along an alley. In 2008, Complainant was engaged in construction and improvements to the property which necessitated ComEd to complete some work on the electrical lines and pole located at the rear of the property. The pole sits at the rear property line near the alley. The electrical lines run along the rear of the property and parallel to the alley.

Complainant testified that he intended to build the new facility very near the property line. Complainant testified that as part of construction on his property, ComEd was contacted and consulted in order to relocate the electrical lines which are at the rear

of the property. Complainant testified ComEd did relocated the lines, but failed to relocate the lines an adequate distance which then required RWE to pay ComEd to de-energy the line so that construction could continue.

Complaint testified that once plans were submitted to ComEd, ComEd moved the lines in November 2009 to meet NESC requirements and solve a temporary problem. Complainant testified that in December 2009 ComEd needed to de-energize the lines so that construction could continue.

Complainant testified that once construction of the building was complete, City of Wheaton contacted him about the distance of the lines from the building. Complainant testified that ComEd once again moved the lines. Complainant contends that ComEd should have moved the lines to the correct distance instead of installing a switch to de-energize the lines.

III. Respondent's Evidence

ComEd presented three witnesses to testify and present evidence. First, Yasim El-Tigani, ComEd Senior Engineering Design tech testified as to the relocation of the lines to ensure proper building clearance. She testified ComEd moved the lines to meet the clearance of 7.5 feet. ComEd testified that the clearance she designed met NESC (National Electrical Safety Code) standards which required ComEd to move the lines to a vertical construction as there was no way to move the pole. If ComEd had moved the pole it would be in traffic, in the alley. El-Tigani testified that the lines today meet NESC standards, but do not meet OSHA standards. El-Tigani testified that ComEd had to install the switch to meet OSHA safe body clearance standards.

Jack Craighead, ComEd Senior Safety Professional, testified and presented the applicable OSHA standards for safe working clearances; 29 CFR 1910.333. Craighead testified that in order for OSHA standard of a 10 foot clearance to be met, ComEd had to de-energize the line.

David D'Hooge, ComEd Principal Engineer, testified and presented the applicable NESC standards for line clearance for ComEd. D'Hooge testified that the proper clearance for a 12 kV line like the equipment located at Complainant's property is 7.5 feet. ComEd also testified that the table Complainant submitted for evidence from City of Wheaton was not relevant to the line/pole location at his property or the de-energizing of the line.

IV. Commission Analysis and Conclusions

The issue presented at hearing is whether Complainant is entitled to recover of the cost to install a switch to de-energize the lines located at Complainant's property during construction. Based on the evidence and testimony presented at hearing, it is the opinion of this Commission that Complainant failed to meet is burden of proof to show that the switch was unnecessary. Further that ComEd demonstrated that the switch was necessary

to meet OSHA clearance standards and that the lines could not have been nor were the lines relocated to meet the 10 foot clearance. As such, the Complaint should be denied.

Complainant contends that ComEd failed to properly move the lines the appropriate distance, however does not provide any evidence as to how ComEd could or would have relocated the lines. Indeed, both sides presented evidence that the pole sits in the right-of-way near the alley. According to ComEd, the pole could not be relocated to meet the clearance. Complainant provided no evidence to contradict ComEd's conclusion.

ComEd contends that the switch was necessary to meet OSHA safe-body clearance standards since the lines could only be moved 7.5 feet. ComEd provided testimony that it moved the lines based on engineering and construction standards which allows for the lines to be moved 7.5 feet but not 10 feet to meet OSHA standards.

Based on the evidence presented, Complainant has not sustained its burden of proof and the Complaint should be denied.

V. Findings and Ordering Paragraphs

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) Commonwealth Edison Company is a public utility as defined in the Illinois Public Utilities Act;
- (2) the Commission has jurisdiction over the parties and the subject matter of this proceeding;
- (3) the findings of fact and conclusions of law reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and findings of law;
- (4) the complaint filed by RWE Management Co. and Daniel Watson on December 20, 2011 against Commonwealth Edison Company is denied;

IT IS HEREBY ORDERED by the Illinois Commerce Commission that the complaint filed by RWE Management Co. and Daniel Watson against Commonwealth Edison Company on December 20, 2011 is denied;

IT IS FURTHER ORDERED that any petitions, objections, or motions made in this proceeding and not otherwise specifically disposed of herein are hereby disposed of in a manner consistent with the conclusion contained herein.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final, it is not subject to the Administrative Review Law.

Respectfully submitted,
Commonwealth Edison Company


By: Mark L. Goldstein, Its Attorney

Mark L. Goldstein
Attorney for Respondent
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(847) 949-1340

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

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

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.



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

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