

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

**RWE Management Co.** :  
-vs- :  
**Commonwealth Edison Company** :  
: **11-0790**  
**Complaint as to installation of unnecessary :**  
**switch to de-energize electrical lines during :**  
**construction in Wheaton, Illinois.** :

**PROPOSED ORDER**

By the Commission:

**I. Procedural History**

On December 20, 2011, RWE Management Co. (“Complainant” or “RWE”) filed a verified formal complaint with the Illinois Commerce Commission (“Commission”) against Commonwealth Edison Company (“Respondent” or “ComEd”). The complaint, filed pursuant to Section 10-108 of the Public Utilities Act (220 ILCS 5/10-108) (“Act”), alleges that Respondent installed an unnecessary switch to de-energize the electrical lines running along Complainant’s property during construction. Complainant seeks recovery of the cost of the installed switch in the amount of \$8,404.29.

Pursuant to notice given in accordance with the law and the rules of the Commission, this matter came on before a duly authorized Administrative Law Judge (“ALJ”) of the Commission at its offices in Chicago, Illinois for a prehearing conference on February 16, 2012. Thereafter, this matter came on for a status hearing on April 18, 2012 and an evidentiary hearing on August 29, 2012. Daniel Watson, the President of RWE, testified on behalf of Complainant. Respondent presented the testimony of Yasmin El-Tigani, a Senior Engineering Design Tech at ComEd, Jack Craighead, a Senior Safety Professional at ComEd, and David D’Hooge, a Principal Engineer at ComEd. At the conclusion of the hearing, the record was marked “Heard and Taken.”

**II. Complainant’s Position**

Mr. Watson testified that in 2008 RWE purchased property adjacent to its existing property and consolidated the two lots into the subject property located at 1010 College Avenue, Wheaton, Illinois. Mr. Watson explained that the rear of the property runs along an alley and that there are electrical lines and a utility pole located at the rear of the property. According to Mr. Watson, RWE intended to build a new facility on the subject property very close to the property line and was concerned about the location of the utility pole. Mr. Watson testified that RWE contacted ComEd and ComEd witness,

Ms. El-Tigani met with RWE representatives at the property before construction began in order to discuss the location of the pole and the relocation of the electrical lines at the rear of the property. Mr. Watson also testified that once RWE submitted all of the construction plans to ComEd, ComEd moved the lines at no cost in November 2009 at a distance he believed to be 7.5 feet and solved a temporary problem, allowing the construction workers to continue working on the property. However, Mr. Watson stated that as the construction workers got closer to installing the roof in December 2009, it became clear that it was not safe to continue with the construction because of the proximity of the workers to the lines.

Mr. Watson testified that ComEd informed RWE that a switch would need to be installed to de-energize the lines to make the site safe to continue construction. RWE agreed to have the switch installed. Mr. Watson stated that once construction of the building was complete, the City of Wheaton informed RWE that the electrical lines were not a safe distance from the building and required ComEd to submit a letter setting forth the distance of the lines from the newly constructed building. Mr. Watson testified that ComEd subsequently moved the electrical lines again and he believed they were moved to a distance of 10 feet away from the building. He further testified that after the lines were moved a second time he began to question why the switch was needed if ComEd could have moved the lines to create a 10 foot clearance. Mr. Watson also submitted a table, Table 232-1 contained in RWE Exhibit 1, which he testified was faxed to him by the City of Wheaton when he inquired about the applicable clearance requirements and shows ComEd should have moved the lines at least 10 feet away when it initially relocated the lines.

Mr. Watson maintains that RWE should receive a refund for the cost of installing the switch to de-energize the lines because ComEd should have moved the lines to the correct distance instead of installing the switch.

### **III. Respondent's Position**

ComEd witness Yasmin El-Tigani testified concerning the relocation of the electrical lines to ensure proper building clearance. Ms. El-Tigani testified that in August 2008 she visited RWE's property to meet with RWE representatives regarding relocating electrical lines on the south side of the subject property. She stated that during this meeting she made it clear to the RWE representatives that: (1) the electrical lines would need to be moved from a horizontal to a vertical construction to meet the clearance of 7.5 feet required by National Electrical Safety Code ("NESC") standards and (2) there was no other way to meet this standard since the existing pole could not be moved because it was in the right-of-way with the alley serving as a driveway. According to Ms. El-Tigani this was the only clearance that was discussed and there was no discussion regarding meeting Occupational Safety and Health Administration ("OSHA") standards for safe working body clearance. Ms. El-Tigani testified that the lines were moved to meet the NESC standards at no cost to Complainant.

Ms. El-Tigani also testified that ComEd had to move the lines again after the building was complete because they were not initially moved to the proper distance to meet the NESC standards due to an error in design caused by miscommunication between new business and regional engineering. This modification was also made at no cost to Complainant. Ms. El-Tigani stated that Complainant was never told that the OSHA required clearance of 10 feet would be included in this modification.

According to Ms. El-Tigani, the modification did not extend the lines to 10 feet but rather to 7.5 feet to meet the NESC standards and they remain at this distance today. Finally, Ms. El-Tigani testified that the lines could not have been extended to a 10 foot clearance and therefore ComEd had to install the switch to de-energize the lines to meet the OSHA safe body clearance standards.

ComEd witness Jack Craighead testified and presented the applicable OSHA standards for safe working clearances set forth in ComEd Exhibit 3. According to Mr. Craighead, ComEd had to install the switch to de-energize the lines since the lines could not be moved 10 feet out in order to meet these standards. He noted that the switch became necessary once the construction workers began to work on the roof and get closer to the lines. Mr. Craighead explained that only qualified workers are permitted to work near energized lines, therefore in situations such as this where the workers are not qualified, the OSHA standards must be satisfied by either creating a clearance of 10 feet between the workers and the energized electrical lines or de-energizing the lines.

ComEd witness David D'Hooge testified and presented the applicable NESC standards for line clearances. According to Mr. D'Hooge, ComEd's construction standards are based on the NESC standards as required by the Commission. He testified that the proper clearance for 12 kV lines like the equipment located at Complainant's property is 7.5 feet. He also testified that the table Complainant submitted into evidence, Table 232-1, is a table from the NESC and it is not relevant to the issue of the location of the lines/pole or the de-energizing of the lines. Mr. D'Hooge stated that the NESC has a number of requirements for any installation and this table details the clearance requirements between the overhead wires and the alley below it. He noted that this is an additional requirement that is separate from the clearance requirements between the lines and the building.

#### **IV. Commission Analysis and Conclusions**

The issue presented at hearing is whether Complainant is entitled to recover the cost of installing a switch to de-energize the electrical lines running along its property during construction because it alleges the switch was unnecessary. After a thorough review of the testimony and evidence offered by both parties in this matter, the Commission finds that Complainant has failed to meet its burden of proof to show that the switch was unnecessary.

Complainant's allegation that the switch was unnecessary is unsupported by the record evidence and refuted by the testimony of ComEd's witnesses. ComEd presented convincing testimony that since the utility pole is located in the right-of-way with the

alley serving as a driveway, the utility pole and the lines could not have been and were not relocated to meet the 10 foot clearance required by OSHA. ComEd provided testimony that it moved the lines based on engineering and construction standards that allow for the lines to be moved 7.5 feet but not 10 feet to meet OSHA safe body clearance standards. RWE failed to provide any evidence as to how ComEd could or would have relocated the lines further to create a clearance of 10 feet.

ComEd also presented testimony that the OSHA safe body clearance standards require that in situations such as this where a person who is unqualified to work near energized lines is working in an elevated position near overhead lines, there must be a clearance of 10 feet between the person and the overhead lines or the lines must be de-energized. Accordingly, ComEd offered testimony that since the lines could not be moved to create a clearance of 10 feet, a switch had to be installed in order to meet the OSHA safe body clearance standards to allow RWE's workers to continue to work near the lines. RWE did not provide any evidence that another option was available to meet this standard.

Finally, ComEd provided testimony that it moved the lines to create a clearance of 7.5 feet and the lines remain at that distance today. This testimony refutes RWE witness Mr. Watson's assertion that after the building was complete ComEd moved the lines to create a clearance of 10 feet during its second relocation of the lines. RWE did not provide any evidence to contradict ComEd's testimony.

Based on the evidence in the record, the Commission concludes that Complainant has not sustained its burden of proof and the complaint is denied.

## **V. Findings and Ordering Paragraph**

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

- (1) ComEd is a "public utility" as defined in the 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) Complainant has not shown that the switch installed by ComEd to de-energize the electrical lines running along Complainant's property during construction was unnecessary and thus is not entitled to a refund of the cost to install the switch; and
- (5) the complaint filed by RWE on December 20, 2011 against ComEd is denied.

IT IS HEREBY ORDERED by the Illinois Commerce Commission that the complaint filed by RWE Management Co. 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.

DATED:	December 4, 2012
BRIEF ON EXCEPTIONS DUE:	December 21, 2012
REPLY BRIEF ON EXCEPTIONS DUE:	December 31, 2012

Sonya J. Teague  
Administrative Law Judge