

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Maria Sroka)	
-vs-)	
Illinois Bell Telephone Company)	Docket No. 13-0125
d/b/a AT&T Illinois d/b/a AT&T Wholesale)	
)	
Complaint as to work done on property)	
in Chicago Ridge, Illinois)	

MOTION OF AT&T ILLINOIS TO DISMISS COMPLAINT

Illinois Bell Telephone Company (“AT&T Illinois”) hereby moves to dismiss this case on the grounds that the Complaint involves a claim over which the Commission lacks jurisdiction and seeks relief that the Commission cannot provide. In support of this motion, AT&T Illinois states as follows.

BACKGROUND

Maria Sroka filed a complaint against AT&T Illinois on February 11, 2013, claiming that the company performed various acts on her real property without legal authority to do so. The Complaint consists of the Commission’s two-page pre-printed form for Formal Complaints, filled out by Ms. Sroka, along with an additional typewritten page containing numbered allegations.

The Complaint alleges that AT&T workers came onto Ms. Sroka’s property in Chicago Ridge in November 2012, cut three holes in the parking lot of the building there, and piled dirt on some of the parking spaces. Complaint, p. 2 ¶ 1. It also alleges that AT&T Illinois installed “a thick cable” under the parking lot. *Id.* ¶ 3. In addition, the Complaint states that the company has no utility easement for the property (*id.* ¶ 2) and that the Village of Chicago Ridge has no utility easement for the property. *Id.*, p. 3 ¶¶ 9-10.

In the Complaint, Ms. Sroka does not identify any specific law, Commission rule, or tariff that is involved with her claim. In fact, nothing is written in the space on the pre-printed complaint form asking for such information. *See id.*, p. 1. The relief she requests is that AT&T Illinois be required to “move the cable from under the parking lot and pay compensation for damages and taking two parking spaces for one month.” *Id.*, pp. 1, 2.

ARGUMENT

The Complaint is flawed in several ways, and the Commission should dismiss it. In particular, the Commission lacks jurisdiction over the subject matter of the Complaint and cannot award the relief that Ms. Sroka seeks.

Lack of Jurisdiction

Section 10-108 of the Illinois Public Utilities Act (“Act”) requires a complainant to identify “any act or things done or omitted to be done in violation, or claimed to be in violation, of any provision of this Act, or any order or rule of the Commission.” 220 ILCS 5/10-108. The Commission has interpreted this statute to require that a complaint specifically allege a violation of the Act, or of a rule or order of the Commission. *See, e.g., Kleefisch v. Commonwealth Edison Co.*, ICC Docket No. 95-0605, 1996 WL 33659822 (May 22, 1996); *Dispenza v. Peoples Gas Light and Coke Co.*, ICC Docket No. 90-0226, 1990 WL 10554125 (Oct. 3, 1990).

The Complaint here does not meet this standard, because it fails to allege that AT&T Illinois violated any specific provision of the Act, or any Commission rule or order. AT&T Illinois has the right to be apprised of the legal bases of the Complaint. *See J. Eck & Sons v. Reuben H. Donnelly Corp.*, 213 Ill. App. 3d 510, 512, 572 N.E.2d 1090, 1091 (1st Dist. 1991) (finding that complaint must state legal bases for claims); *Peoples Gas Light and Coke Co. v. Illinois Commerce Comm’n*, 221 Ill. App. 3d 1053, 1060, 583 N.E.2d 68, 72 (1st Dist. 1991)

(finding that Commission complaint must be adequate to provide notice of claims to respondent). Since the Complaint contains no stated legal basis, it should be dismissed.

Moreover, even if Ms. Sroka had attempted to tie her allegations to a specific provision of the Act or to a Commission order or rule, her efforts would fail. The Commission is not a court of general jurisdiction. Its authority instead is limited to that provided by the Illinois General Assembly through the Act. *See Business and Professional People for the Public Interest v. Illinois Commerce Comm'n*, 136 Ill. 2d 192, 201, 555 N.E.2d 693, 697 (1989). The Complaint, in essence, alleges that AT&T Illinois has committed a trespass on her property, a common-law tort¹ that falls outside the Commission's purview. *See Interim Order, Bates v. Illinois Power Co. d/b/a AmerenIP*, ICC Docket No. 05-0667, at 3 (Jan. 25, 2006) (stating that Commission lacks authority to rule on tort law claims such as trespass) (attached hereto as Exhibit 1); *Martin v. Peoples Gas Light and Coke Co.*, ICC Docket No. 87-0311, 1987 WL 1376765 (Oct. 28, 1987) (stating that Commission is not proper forum to determine whether utility had committed criminal trespass); *see also Sutherland v. Illinois Bell*, 254 Ill. App. 3d 983, 991, 627 N.E.2d 145, 150-51 (1st Dist. 1993) (“[w]hile we have held that the ICC has exclusive jurisdiction over claims which in essence assert that a utility company has charged an excessive or unjust rate for its service,... we have made clear that suits for damages resulting from breach of contract or tortious conduct are properly brought in the first instance in circuit court pursuant to section 5-201 of the Act”) (citations omitted).

Because the Commission lacks jurisdiction over the subject matter of Ms. Sroka's claims, it should dismiss the Complaint. *See Bates, supra*, at 4; *see also Order, Paniotte v. Illinois Bell Tel. Co.*, ICC Docket No. 11-0393, at 4 (Sept. 11, 2002) (dismissing claims for common law

¹ The tort of trespass involves “an invasion ‘of the exclusive possession and physical condition of land.’” *Colwell Systems, Inc. v. Henson*, 117 Ill. App. 3d 113, 116, 452 N.E.2d 889, 892 (4th Dist 1983) (quoting Restatement (Second) of Torts, ch. 7, at 275 (1965)).

defamation and for violation of the Consumer Fraud Act because Commission had no authority to act on such claims).

Inability to Provide Requested Relief

Not only does the Commission lack jurisdiction to adjudicate Ms. Sroka's trespass claim, it is unable to provide the relief she requests. First, the Commission cannot award the compensation she seeks "for damages and taking two parking spaces for one month." Complaint at 1. The Commission's jurisdiction is limited to addressing claims for reparations or for refunds of overcharges under the Act; it does not have jurisdiction to award civil damages. *See Village of Evergreen Park v. Commonwealth Edison Co.*, 296 Ill. App. 3d 810, 813, 695 N.E.2d 1339, 1341 (1st Dist. 1998); *see also Consumers Guild of America, Inc. v. Illinois Bell Tel. Co.*, 103 Ill. App. 3d 959, 962, 431 N.E.2d 1047, 1049-50 (1st Dist. 1981) (suit for compensatory damages not properly brought to Commission).²

In addition, the Commission cannot, as the Complaint requests, order AT&T Illinois to "move the cable from the parking lot." Complaint at 1. Such relief is equitable in nature, and the Commission has no authority to provide an equitable remedy. *Fountain Water Dist. v. Illinois Commerce Comm'n*, 291 Ill. App. 3d 696, 702-03, 684 N.E.2d 145, 151 (5th Dist. 1997) (finding that Commission had no authority under Public Utilities Act to consider equitable matters). Dismissal of the Complaint thus is also appropriate because of the nature of the remedies that Ms. Sroka seeks.

² While the Act gives telecommunications carriers such as AT&T Illinois eminent domain authority (*see* 220 ILCS 5/8-509, 8-509.5), the law clearly leaves the grant of compensation for land taken with the circuit court under the Eminent Domain Act. *See* 735 ILCS 30/1 *et seq.*

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing *Motion of AT&T Illinois to Dismiss Complaint* was served upon all parties electronically and/or U.S. Mail this 21st day of February, 2013.

/s/ _____
James A. Huttenhower

SERVICE LIST
13-0125

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STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

William Bates, Trustee, CRB Trust	:	
-vs-	:	
Illinois Power Company d/b/a	:	
AmerenIP	:	05-0667
	:	
Complaint as to trespassing and	:	
destruction of private property in	:	
Champaign County, Illinois.	:	

INTERIM ORDER

By the Commission:

On October 18, 2005, William Bates, as Trustee of the CRB Trust, ("Complainant") filed with the Illinois Commerce Commission ("Commission") a formal complaint against Illinois Power Company d/b/a AmerenIP ("Respondent"). Complainant alleges that Respondent trespassed, or caused others to trespass, on certain farm property located at County Road 1400E and County Road 1900N in Somer Township in Champaign County in May and/or June of 2005. Once upon said property, Complainant alleges that Respondent, or its agents, improperly managed vegetation in violation of an easement agreement with Complainant and in violation of Public Act 92-0214. Complainant also alleges that Respondent has failed to compensate it for \$3,500 in damages. Complainant requests that the Commission direct Respondent to pay Complainant \$3,500 in damages.

Pursuant to due notice, a status hearing was held in this matter before a duly authorized Administrative Law Judge of the Commission at its offices in Springfield on November 8, 2005. Complainant appeared without counsel at the hearing, while counsel for Respondent entered an appearance. On November 9, 2005, Respondent filed a "Motion to Dismiss." Complainant filed a response to the motion on November 22, 2005, to which Respondent replied on December 2, 2005. No other pleadings, testimony, or other evidence have been received into the record. Respondent's motion is the subject of this Interim Order. A Proposed Interim Order was served on the parties. No briefs on exceptions were received.

In its motion to dismiss, Respondent argues that Complainant has failed to plead sufficient allegations of fact to state a cause of action. Respondent asserts that Illinois pleading requirements are specifically characterized as involving fact pleading, as distinguished from the more liberal and less detail oriented general notice pleading employed elsewhere. Respondent points out that there is no specific allegation that it did not provide notice as required by law, and while the complaint references the vegetation management standards of the American National Standards Institute

("ANSI"), there are no factual allegations as to what manner Respondent violated the standards. Instead, Respondent notes, Complainant only alleges that there was a violation. Respondent recognizes that Complainant represents himself pro se and that he may not be aware of the rules of pleading. Nevertheless, Respondent asserts that the complaint should inform it with some specificity as to what facts support the legal claims. Respondent contends that it is unfair and contrary to its due process rights to be charged with various violations of the law, but not be advised as to the bases that support such claims. Respondent argues that it should not be required to engage in discovery to discern what Complainant does or does not know in order to defend itself at this stage.

Respondent also contends that certain claims raised by Complainant are beyond the Commission's jurisdiction. Specifically, Respondent argues that allegations of trespass, destruction of private property, and violation of an easement agreement are grounded in civil contract and tort law and should therefore be brought before a civil court and not the Commission. In any event, Respondent notes that Complainant failed to attach a copy of the easement agreement to the complaint, which Respondent asserts is Complainant's obligation to do. Without the easement agreement, Respondent states that it does not know what it is alleged to have done that is inconsistent with the agreement.

Complainant's sole prayer for relief, Respondent continues, is also a matter for a civil court. Respondent states that even if the Commission assumes that Complainant intends to assert that Respondent's failure to comply with the Public Utilities Act ("Act"), 220 ILCS 5/1-101 et seq., resulted in damage to Complainant's property, Complainant offers no statutory authority to support a claim that the Commission could impose damages. Respondent asserts that Complainant does not offer any such statutory authority because none exists. Respondent avers that the law is well-settled that the Commission has no authority to award damages.

In response to the motion to dismiss, Complainant asserts that the complaint contains sufficient information. Complainant also notes that attached to the complaint are data requests. Upon receiving answers to these data requests from Respondent, Complainant believes that he will be able further discuss his allegations. Complainant also states in his response that he is alleging that Respondent failed to provide proper notice and that this claim along with his claims of trespass, destruction of private property, and violation of an easement agreement are at the heart of this proceeding. With regard to the easement agreement itself, Complainant asserts that Respondent drafted the agreement and already has a copy of it. In closing, Complainant asks that he be given an opportunity to present facts supporting the complaint and leaves to the Commission to decide whether it has authority to award damages.

In its reply to Complainant's response, Respondent reiterates that the complaint fails to contain sufficient facts and points to Complainant's reliance on yet to be answered data requests. Respondent also asserts that it is incumbent upon all complainants, even those appearing pro se, to allege facts upon which relief may be

granted. Respondent notes further that the Commission's jurisdiction is simply not as broad as Complainant may believe.

Respondent's motion to dismiss raises fundamental questions about the Commission's authority in this matter. As a creature of state law, the Commission's power is limited to that which has been granted to it by various statutes. The types of issues/claims that the Commission may hear is one area limited by statute. Among Complainant's allegations are trespass, destruction of private property, and violation of an easement agreement. Regardless of whether such acts occurred, the Commission agrees with Respondent that the Commission lacks authority to rule on such civil contract and tort law claims. Similarly, with regard to this type of case, no statute gives the Commission authority to award damages.

What authority the Commission does have over the issues raised in the complaint emanates primarily from Section 8-505.1 of the Act.¹ This section concerns non-emergency vegetation management activities by electric public utilities. Subsection (a)(1) of Section 8-505.1 requires electric public utilities to follow the most current tree care and maintenance standard practices set forth in ANSI A300. Subsections (a)(2) and (3) describe the notice that must be provided before engaging in non-emergency vegetation management. Subsection (a) also provides that the Commission shall have sole authority to investigate, issue, and hear complaints against a utility under subsection (a). Clearly Section 8-505.1 gives the Commission authority to hear and rule on complaints alleging improper notice and violations of the standards set forth in ANSI A300. Respondent, however, does not dispute the Commission's jurisdiction over such claims. Rather, Respondent contends that Complainant failed to provide sufficient information in the complaint to inform it of what it allegedly did wrong. The Commission understands Respondent's need to know what it is being accused of, but in light of what information has been provided believes that dismissal of the claims under Section 8-505.1 would be premature at this point. Respondent is not precluded, however, from moving to dismiss the remaining claims at a later time.

Accordingly, the Commission grants in part and denies in part Respondent's motion to dismiss. In granting the motion in part, the Commission dismisses from this proceeding Complainant's claims concerning trespass, destruction of private property, and violation of an easement agreement on the grounds that the Commission lacks jurisdiction over these claims. In denying the motion in part, the Commission will allow Complainant to present evidence on Respondent's alleged failure to provide proper notice and comply with ANSI A300 vegetation management standards. Even if the Commission eventually finds in favor of Complainant on the latter issues, however, the Commission will not award Complainant the \$3,500 it seeks (or any other amount) since the Commission lacks statutory authority to award damages in this type of proceeding. The Commission also takes this opportunity to remind the parties that they may avail themselves of 83 Ill. Adm. Code Part 201, "Voluntary Mediation Practice." Mediation may enable both parties to resolve this dispute to their mutual satisfaction.

¹ Public Act 92-0214, which is referenced in the complaint, amends Section 8-505.1 of the Act.

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

- (1) Complainant's claims concerning trespass, destruction of private property, and violation of an easement agreement should be dismissed on the grounds that the Commission lacks jurisdiction over these claims;
- (2) Complainant may present evidence on Respondent's alleged failure to provide proper notice and comply with ANSI A300 vegetation management standards in accordance with Section 8-505.1 of the Act; and
- (3) the Commission lacks statutory authority to award damages in this type of proceeding.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the November 9, 2005 Motion to Dismiss filed by Illinois Power Company d/b/a AmerenIP is hereby granted in part and denied in part as set forth in Findings (1), (2), and (3).

IT IS FURTHER ORDERED that this is not a final order and is not subject to the Administrative Review Law.

By order of the Commission this 25th day of January, 2006.

(SIGNED) CHARLES E. BOX

Chairman