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**ILLINOIS COMMERCE COMMISSION**

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

**ORIGINAL**

ILLINOIS COMMERCE  
COMMISSION

2013 APR -9 A 11:25

CHIEF CLERK'S OFFICE  
No. 10-0591

EVANGER'S PET FOOD COMPANY, INC. :  
v. :  
COMMONWEALTH EDISON COMPANY :

**VERIFIED ANSWER OF  
COMMONWEALTH EDISON COMPANY**

Commonwealth Edison Company ("ComEd"), by its counsel, pursuant to Section 200.180 of the Rules of Practice of the Illinois Commerce Commission ("Commission"), 83 Ill. Adm. Code § 200.180, and the schedule set forth by the Administrative Law Judge in the above-captioned proceeding, hereby provides this Answer to the Third Amended Complaint of Evanger's Dog And Cat Food Co., Inc. ("Evanger's" or "Complainant") in the above-captioned case. The answers below are with respect to the corresponding paragraphs as listed in the Third Amended Complaint.

1. ComEd ADMITS that three 50 kVA transformers serve the premises located at 221 Wheeling Road, Wheeling Illinois 60090, which is believed to be Complainant's premises. On May 3, 2010, an equipment malfunction involving one of the three transformers occurred. As for the remaining allegations, ComEd does not have information sufficient to admit or deny such, and therefore DENIES the same.
2. ComEd does not have information sufficient to admit or deny the allegations, and therefore DENIES the same.
3. ComEd ADMITS that on May 3, 2010, it was notified of an interruption at Complainant's premises at or about 2:07 p.m. and that service was restored at or by 7:05 p.m. That same day, a crew replaced one of the three transformers serving the premises.

As to the remaining allegations, ComEd does not have information sufficient to admit or deny such, and therefore DENIES the same.

4. ComEd ADMITS that on November 17, 2010, it was notified of an interruption at Complainant's premises at or about 6:24 a.m. and that service was restored at or by 10:18 a.m. That same day, a crew replaced one of the three transformers serving the premises. As to the remaining allegations, ComEd does not have information sufficient to admit or deny such, and therefore DENIES the same.
5. ComEd does not have information sufficient to admit or deny the allegations, and therefore DENIES the same.
6. ComEd ADMITS that in June 2011, a crew inspected the three transformers serving the Premises and determined them to be in good condition. ComEd DENIES the remaining allegations in this paragraph.
7. ComEd DENIES the allegations in this paragraph.
8. ComEd DENIES the allegations in this paragraph.

**SEPARATE DEFENSES APPLICABLE TO CLAIMS**

ComEd states the following affirmative defenses to the allegations in the Third Amended Complaint:

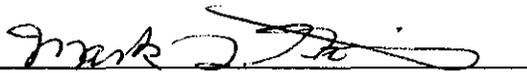
1. The allegations in the Third Amended Complaint and relief sought are barred by the decision of the Illinois Supreme Court in *Sheffler v. Commonwealth Edison Co.*, 2011 Ill. 110166 (2011), which reaffirms that ComEd has no duty to provide continuous and uninterrupted service.

2. The allegations in the Third Amended Complaint and relief sought are barred by ComEd's Commission-approved tariffs, which, among other things, (i) provide that the retail customer is responsible for protecting its electrical equipment from unavoidable voltage fluctuations, surges and sags, and service interruptions to one or more phases that may occur in the provision of electrical service (ILL. C. C. No. 10, 2<sup>nd</sup> Rev. Sheet No. 152); (ii) provide that ComEd is not responsible for damages for any failure to provide electric service or for interruption to one or more phases if such failure or interruption is without willful default or negligence on ComEd's part (ComEd Ex. E, ILL. C. C. No. 10, Orig. Sheet No. 146); and, (iii) limit recovery to a bill credit, but only if the retail customer is interrupted for a period of at least twelve consecutive hours (ILL. C. C. No. 10, 2<sup>nd</sup> Rev. Sheet No. 203).
3. Although ComEd denies that it acted improperly or negligently in any way, ComEd asserts that any harm alleged to have been suffered by Complainant was caused either in whole or part by the action(s) or inaction(s) of Complainant or one of its principals. Such actions may include diversion of electricity and/or unauthorized attachments to ComEd's facilities, which are the subject of ongoing criminal proceedings before the Circuit Court of Cook County Criminal Division in Docket Nos. 10MC1-118895 and 10MC1-118894.

THEREFORE, having answered the Third Amended Complaint, ComEd requests the Commission deny the relief sought by Complainant, as requested herein.

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Dated: April 2, 2013

Respectfully submitted,  
COMMONWEALTH EDISON COMPANY

By:   
One of its attorneys

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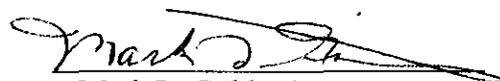
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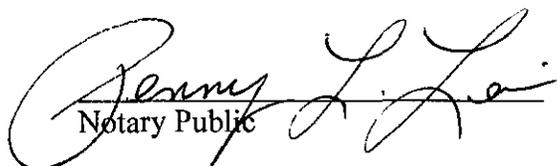
Counsel for Commonwealth Edison Company

**VERIFICATION**

I, MARK L. GOLDSTEIN, being first duly sworn on oath, states that he is one of the attorneys for Commonwealth Edison Company in the captioned matter, that he has read the foregoing Verified Answer, that he verily believes that the information contained therein is true. to his best knowledge and belief. Affiant further states that the statements made in the Verified Answer as to want of knowledge sufficient to form a belief are true to his best knowledge..

  
Mark L. Goldstein

Subscribed and Sworn to before me  
*APRIL*  
this 2nd day of ~~March~~, 2013.

  
Notary Public



**CERTIFICATE OF SERVICE**

I hereby certify that on April <sup>4</sup>, 2013, I served the foregoing Verified Answer of Commonwealth Edison Company by causing a copy thereof to be placed in the U. S. Mail, first class postage affixed addressed to each of the parties indicated below:

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

Mr. Gregory Bedell  
Knabe, Kroning & Mainzer  
10 S. Clark St., Ste. 2301  
Chicago, IL 60603

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

  
Mark L. Goldstein