

2013 APR 10 A 11: 28

CHIEF CLERK'S OFFICE

Chet DeKing :
--vs-- : 13-0186
Commonwealth Edison Company :
Complaint as to removing 12 Blue :
Spruce Evergreens from my property :
without giving proper notice in :
Sugar Grove, Illinois. :

RESPONDENT'S MOTION TO DISMISS FORMAL COMPLAINT

Now comes the Respondent, Commonwealth Edison Company ("Respondent" or "ComEd") by and through its attorney, Mark L. Goldstein, and files Respondent's Motion to Dismiss the Formal Complaint filed by the Complainant, Chet DeKing ("Complainant").

On February 28, 2013, Complainant filed the Formal Complaint, which asks the Commission to order ComEd to replace trees which ComEd removed from an easement it owns beneath one of its transmission lines. The basis of the Formal Complaint is Complainant's allegation that ComEd failed to give him proper notice of vegetation management activities. The Formal Complaint should be dismissed because Complainant's allegation contradicts his admission in the Informal Complaint regarding this incident in Docket No. 2012-17525.

Complainant alleges in the Formal Complaint that "They [ComEd] did not contact me (in fact I had to contact ComEd) until 3 days prior to removal of my evergreens. I would have tried to remove the trees with the appropriate amount of time." (Formal Complaint, p. 2.) This allegation is not credible on its face because it begs the question of how Complainant would have known to contact ComEd in the first instance. Complainant's statement in the Informal Complaint – made on November 19, 2012, one day before the tree removal activity – was quite different. There he alleged that "approximately six weeks ago he found a blue card on his door

that said the company will be cutting down his trees, which are in the company easement.” See Attachment A. The latter statement is more consistent with ComEd’s records, which show that ComEd’s contractor left a written notice at Complainant’s address on October 8, 2012. The Public Utilities Act provides that ComEd must provide a customer affected by vegetation management activity with direct notice (as opposed to newspaper notice) “not less than 21 days nor more than 90 days before the activities begin.” 220 ILCS 5/8-505.1(a)(2). ComEd provided the Complainant with notice within the prescribed time period by his own admission in his Informal Complaint, and he should not now be allowed to contradict his earlier statement.

For the reasons stated above, Commonwealth Edison Company respectfully requests that the Formal Complaint filed by Chet DeKing against Commonwealth Edison Company on February 28, 2013 be dismissed.

Respectfully submitted,
Commonwealth Edison Company

By: 
Mark L. Goldstein, Its Attorney

Mark L. Goldstein
Attorney for Respondent
3019 Province Circle
Mundelein, IL 60060
(847)949-1340

Peter J. Thornton
Attorney for Respondent
Eimer Stahl LLP
224 South Michigan Avenue
Suite 1100
(312)660-7664

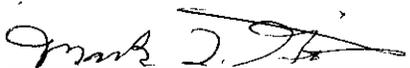
VERIFICATION

I, Erin Buechler, being first duly sworn on oath, states that I am a Senior Regulatory Specialist for Commonwealth Edison Company, and I have read the foregoing Verified Motion to Dismiss Complaint, know the contents thereof, and that same are true and correct to the best of my information and belief.

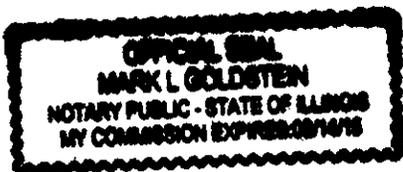

Erin Buechler

Subscribed and Sworn to before me

this 4th day of April, 2013.



Notary Public



CERTIFICATE OF SERVICE

I do hereby certify that on April 8, 2013, I served the Respondent's Motion to Dismiss Formal Complaint 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 in the captioned matter:

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

Mr. Chet DeKing
44W071 Hazelcrest Dr.
Sugar Grove, IL 60554

Mr. John T. Riley
Administrative Law Judge
Illinois Commerce Commission
160 N. LaSalle St., Ste. C-800
Chicago, IL 60601


Mark L. Goldstein