

EVANGER'S PET FOOD CO. )  
 )  
vs. ) 10-0591  
 )  
COMMONWEALTH EDISON COMPANY )

**MOTION TO STRIKE AFFIRMATIVE DEFENSE**

COMES NOW Evanger's Dog and Cat Food Co, Inc. ("Evanger's"), named herein as Joel Sher for Evanger's Pet Food Co., by and through Gregory A. Bedell, of Knabe, Kroning & Bedell, and respectfully moves this honorable tribunal to strike the third affirmative defense of Commonwealth Edison ("ComEd"). In support of this motion, Evanger's states as follows:

1. Evanger's seeks relief in its Third Amended Formal Complaint against Commonwealth Edison Company ("ComEd") based on the disruptions of electric service that occurred at its Wheeling, Illinois, facility.
2. ComEd has filed an Answer and Affirmative Defenses to the Third Amended Formal Complaint.
3. ComEd's third affirmative defense claims, without any factual allegations, that "any harm alleged to have been suffered by Complainant was caused either in whole or in part by the action(s) or inaction(s) of Complainant or one of its principles." ComEd then makes suggestion of hypothetical possibilities but fails to allege any facts.
4. Affirmative defenses that fail to allege facts supporting the defenses should be stricken. *DeWitt County Public Bldg. Com'n v. DeWitt County*, 469 N.E.2d 689, 128 Ill.App.3d 11, 83 Ill.Dec. 82 (4th Dist., 1984).

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ILLINOIS COMMERCE  
COMMISSION

**Wherefore**, Evanger's prays this honorable tribunal strike ComEd's third affirmative defense.

**EVANGER'S DOG AND CAT FOOD CO.,  
INC., an Illinois corporation,**

By: 

One of its attorneys

Gregory A. Bedell, Esq.  
Knabe, Kroning & Bedell  
Two First National Plaza  
20 South Clark Street  
Suite 2301  
Chicago, Illinois 60603  
312.977.9119  
312.977.9009 (fax)  
[gbedell@kkbchicago.com](mailto:gbedell@kkbchicago.com)

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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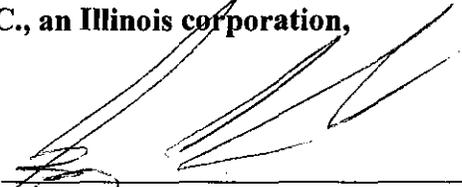
**NOTICE OF FILING**

To: Mark L. Goldstein  
Mark L. Goldstein, P.C.  
3019 Province Circle  
Mundelein, Illinois 60060

Thomas S. O'Neill  
Sr. Vice President & General Counsel  
Commonwealth Edison Company  
440 S. LaSalle Street  
Chicago, Illinois 60605

Please take notice that on March 15, 2013, we caused to be filed with the Clerk of the Illinois Commerce Commission Evanger's Dog & Cat Food Co.'s **ANSWER TO AFFIRMATIVE DEFENSES and MOTION TO STRIKE AFFIRMATIVE DEFENSE** copies of which are attached and hereby served on you.

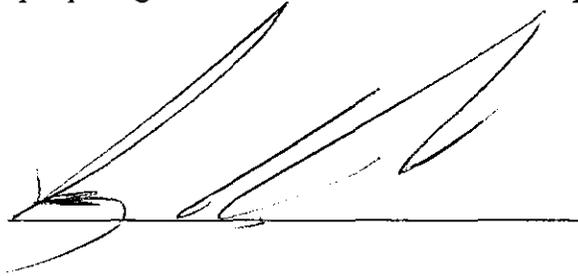
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Suite 2301  
Chicago, Illinois 60603  
(312) 977.9119  
19046

**CERTIFICATE OF SERVICE**

I, GREGORY A. BEDELL, an attorney, certify that I caused to be served a copy of Evanger's Dog & Cat Food Co.'s **ANSWER TO AFFIRMATIVE DEFENSES, MOTION TO STRIKE AFFIRMATIVE DEFENSE** and this Notice of Filing and Certificate of Service to the above persons at the above addresses, by depositing same in the U.S. Mail at 20 South Clark Street, Chicago, Illinois 60603 with proper postage affixed before the hour of 5:00 p.m. on this 19<sup>th</sup> day of April, 2013.

A handwritten signature in black ink, appearing to read "Gregory A. Bedell", is written over a horizontal line. The signature is stylized and somewhat cursive.