

Richard Kraft	:	CHIEF CLERK'S OFFICE
-vs-	:	11-0165
Commonwealth Edison Company	:	
	:	
Complaint as to power outages	:	
in Highland Park, Illinois.	:	

RESPONDENT'S MOTION TO DISMISS

Now comes the Respondent, Commonwealth Edison Company ("Respondent" or "ComEd"), by and through its attorney, Mark L. Goldstein, and moves to dismiss the captioned amended formal complaint filed by Richard Kraft ("Complainant"), pursuant to 83 Ill. Adm. Code 200.190.

1. On February 22, 2011, Complainant filed a complaint with the Illinois Commerce Commission ("ICC" or "Commission") alleging power outages at his property in July 2010 and requesting damages of approximately \$36,000. On October 26, 2011, Complainant filed an amended formal complaint ("Complaint") in which he reduced his alleged damages to approximately \$24,700. The nature of the alleged damages remained the same.¹ This matter was then continued a number of times pending the outcome of ComEd's case related to the July 23, 2010 Storm Systems, Docket No. 11-0289. In the Commission's Order dated November 20, 2012, the Commission determined Section 16-125 of the Public Utilities Act ("Act") was inapplicable.

2. The relevant authority for "complaints regarding loss or damage occasioned by a public utility" is contained in 220 ILCS 5/10-109. In this section, the General

¹ The alleged damages sought by Complainant are not actual damages; Complainant seeks consequential damages that occurred when his sump-pump's battery drained and flooding occurred in his basement. Consequential damages are not provided for under the Public Utilities Act or ComEd's Tariffs, as approved by the ICC.

Assembly conferred upon the ICC authority to review claims for property damage that were not responded to by the utility in a timely manner. However, Complainant fails to make any allegations that would support such a review. In fact, Complainant attaches to his original complaint a copy of ComEd's response to his claim.

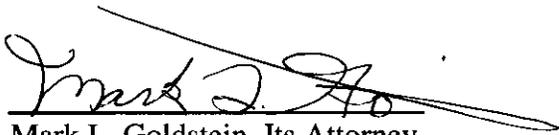
3. Complainant makes a broad allegation that ComEd breached a duty to provide uninterrupted service (Complaint, ¶ 18); however, there is a conspicuous absence of a reference to any such requirement in the Act or the Commission's Rules. Indeed, no such requirement exists and the Act provides no relief for failure to provide uninterrupted service.

4. Additionally, the Complaint demands ComEd to pay approximately \$24,700 in damages. Yet, Complainant fails to identify a single section of the PUA granting the Commission authority to award the requested relief. Such a section of the PUA does not exist – the courts and the Commission has been clear and consistent that the Commission does not have authority to award monetary damages. *Moening v. Illinois Bell Tel. Co.*, 139 Ill. App. 3d 521, 528 (1985). The Complainant requests relief that this Commission cannot grant.

5. In sum, the Complaint fails for numerous reasons. As an initial matter, it requests relief that cannot be awarded by the ICC. It fails to allege facts to show a review of its claim is warranted under 220 ILCS 5/10-109. And it further fails to provide any basis for a fictional reliability standard of "uninterrupted service." Therefore, without sufficient support to provide a rationale supporting the grant of a possible remedy available pursuant to the Act, the Complaint should be dismissed with prejudice.

WHEREFORE, Respondent, Commonwealth Edison Company respectfully requests that the Complaint on behalf of the Complainant, Richard Kraft, be dismissed with prejudice.

Respectfully submitted,
Commonwealth Edison Company

By: 
Mark L. Goldstein, Its Attorney

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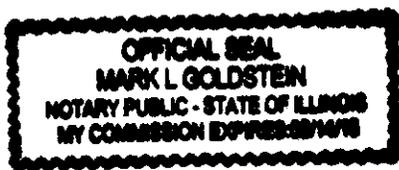
VERIFICATION

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 Respondent's Motion to Dismiss, know the contents thereof, and that same are true and correct to the best of my knowledge and belief.


Erin Buechler

Subscribed and Sworn to before me
this 4th day of ^{June}~~May~~, 2013.


Notary Public



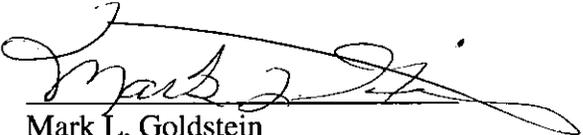
CERTIFICATE OF SERVICE

I certify that on June 4, 2013, I served the foregoing Respondent's Motion to Dismiss by causing a copy thereof to be placed in the U.S. Mail, , first class postage affixed, addressed to each of the parties listed below:

Ms. Elizabeth A. Rolando
Chief Clerk
Illinois Commerce Commission
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Mr. Richard W. Hillsberg
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Buffalo Grove, IL 60089

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


Mark L. Goldstein