

1 STATE OF ILLINOIS
2 ILLINOIS COMMERCE COMMISSION

3 IN THE MATTER OF:)
4 JOEL SCHER EVANGERS PET FOOD)
COMPANY,)
5)
Plaintiff,)
6 vs.) No. 10-0591
7 COMMONWEALTH EDISON COMPANY,)
8 Defendant.)

9
10 Complaint as to billing/charges in Wheeling, Illinois.

11
12 Chicago, Illinois
September 26, 2013

13 Met, pursuant to notice at 1:00 p.m.

14 BEFORE:

15 MS. SONJA TEAGUE, Administrative Law Judge

16 APPEARANCES:

17 LAW OFFICES OF GREGORY A. BEDELL, by
18 MR. GREGORY A. BEDELL
20 South Clark Street
19 Suite 2301
Chicago, Illinois 60603
20 Phone: (312) 578-1351

21 On behalf of the Plaintiff;

22 COMMONWEALTH EDISON COMPANY, by
MR. MARK L. GOLDSTEIN
23 3019 Province Circle
Mundelein, Illinois 60060
24 Phone: (847) 949-1340

25 On behalf of Commonwealth Edison Company.

1 JUDGE TEAGUE: Okay. Pursuant the direction of
2 the Illinois Commerce Commission, I now call Docket
3 No. 10-0591, Joel Sher Evangers Pet Food Company versus
4 Commonwealth Edison Company. This matter concerns the
5 complaint as to billing/charges in Wheeling, Illinois.

6 Will the parties please enter their
7 appearances for the record?

8 MR. BEDELL: Good afternoon, your Honor, Gregory
9 Bedell for Evangers Dog and Cat Food Company. Do you
10 need my address?

11 JUDGE TEAGUE: Yes, please.

12 MR. BEDELL: 20 South Clark, Suite 2301, Chicago,
13 Illinois 60603.

14 MR. GOLDSTEIN: For Commonwealth Edison Company,
15 Mark L. Goldstein, 3019 Province Circle, Mundelein,
16 Illinois 60060. My telephone number is (847) 949-1340.

17 JUDGE TEAGUE: Thank you.

18 As you know, there's an outstanding motion to
19 strike the affirmative defenses just filed by Evangers,
20 and I'm going to rule on that today and I'm actually
21 going to deny that motion because the respondent's
22 affirmative defense contains sufficient information to
23 give reasonable notice of the nature of the claim or
24 defense that ComEd is going to assert.

25 MR. BEDELL: Your Honor, may I bring something to

1 your attention --

2 JUDGE TEAGUE: Sure.

3 MR. BEDELL: -- that I didn't do earlier because it
4 only happened yesterday?

5 I would like to tender to you a copy of motion
6 to dismiss filed in the matter of the People in the
7 State of Illinois versus Joel and Holly Sher,
8 10 CR-7268. It is a motion to dismiss the indictment.
9 The relevance of that is the attachment to the --
10 ComEd's response to our motion to strike relied
11 exclusively on the proffer made in a -- in connection
12 with a bond hearing in that case.

13 JUDGE TEAGUE: Mm-hmm.

14 MR. BEDELL: For the same basic reason that we
15 moved to strike the affirmative defenses here, the
16 criminal indictment is going -- probably is going to be
17 dismissed within the next two weeks because, as that
18 motion indicates, the State failed to include factual
19 information concerning specific dates on when certain
20 things were allegedly done. And without that and the
21 way they've pled -- the statute that they've pled, the
22 indictment must be dismissed. So the basis on which
23 ComEd is saying we've actually given them notice is
24 going to disappear. So at the very least, I would like
25 you to enter and continue the motion until there's been

1 a ruling in the criminal court case because if it's
2 dismissed, then that proffer is useless.

3 JUDGE TEAGUE: Well, I think that -- My only issue
4 with that is that -- I mean, I think ComEd, they're just
5 saying that's one of their defenses, not saying they're
6 going to absolutely have a slam dunk, like, they're
7 going to be successful with that, but that's just one of
8 their defenses, that that's their allegation; and I
9 think they've given appropriate notice that that might
10 be something they're going to argue, which is just --
11 that's all this pleading is real involved.

12 MR. BEDELL: I understand.

13 JUDGE TEAGUE: And then when we go to trial, you
14 know, at that point, this indictment has been dismissed,
15 then they don't really have anything to grab ahold to.

16 MR. BEDELL: I understand. But just for the
17 record, if I might state, they don't have any dates.
18 They don't have any dates. You can't say over the
19 course of two years as the indictment said somebody did
20 something bad.

21 JUDGE TEAGUE: But it's just an answer. It's
22 not -- Do you know what I mean? They're just --

23 MR. BEDELL: The pleading requirements are the
24 same. They're required to set out factual basis for the
25 affirmative defense, and they just make a general

1 allegation that they were monkeying around with the
2 equipment; therefore, they have some responsibility.
3 No, that's not sufficient. They have to say when we
4 were monkeying around with the equipment and give us an
5 idea.

6 JUDGE TEAGUE: Do you have a response because I
7 don't --

8 MR. GOLDSTEIN: And, Judge, with respect to the
9 motion to dismiss the indictment, obviously there has
10 been no ruling on it. I'm not a criminal attorney so I
11 don't know that I can speak directly to it, but there
12 has to be a vast difference between the matter at the
13 Commerce Commission versus the matter in the criminal
14 court.

15 JUDGE TEAGUE: Mm-hmm.

16 MR. GOLDSTEIN: I think that what we could do to
17 flesh out some of the things that Mr. Bedell discussed
18 in his argument is to have a period of discovery here at
19 the Commission, and perhaps we could flesh all that out.
20 There's no telling what the Court is going to do with
21 the motion to dismiss the indictment. As I read it,
22 it's a statute of limitations issue which obviously
23 would not be present in a matter before the Commerce
24 Commission with respect to what was alleged in the third
25 affirmative defense by ComEd.

1 JUDGE TEAGUE: Mm-hmm.

2 MR. BEDELL: Just briefly, your Honor, it is
3 statute of limitations issue based on the fact that in
4 order to state the claim, for lack of a better phrase,
5 they were -- the State was required to plead specific
6 dates and events in order to -- for the indictment to be
7 viable, and they didn't, and that's the same thing here
8 with the affirmative defense. And I'll just rest on
9 that.

10 One last thing, there is a difference between
11 a criminal case and a -- and the case here controlled by
12 the Illinois Code of Civil Procedures. The pleading
13 requires more exacting here. The standard for a
14 criminal case is essentially probable cause. Probable
15 cause isn't sufficient in a civil case. It is
16 stating -- It's a fact-pleading jurisdiction. So
17 Counsel is right, but is right in support of my argument
18 that there should have been facts here.

19 MR. GOLDSTEIN: Okay. I don't think I said that,
20 but okay.

21 JUDGE TEAGUE: What did you want to say?

22 MR. GOLDSTEIN: I have nothing else I want to say,
23 Judge. I don't know that I actually stated exactly what
24 Mr. Bedell stated, but that's okay.

25 JUDGE TEAGUE: Yeah. I mean, I -- I don't agree

1 with you, but as a courtesy, I will -- if you want, I'll
2 hold off on making a ruling on it, but I'm really not
3 persuaded by what you said.

4 MR. BEDELL: I understand, your Honor.

5 JUDGE TEAGUE: But I will, and if you want to go
6 ahead.

7 MR. GOLDSTEIN: So I think what we ought to do
8 then, Judge, is set -- you know, I guess we could have
9 discovery out to Mr. Bedell.

10 MR. BEDELL: Are we both going to exchange written
11 discovery, your Honor?

12 MR. GOLDSTEIN: Yeah. Why don't we both exchange
13 written discovery in about four weeks. I don't know
14 that I brought with me -- The last time we extended the
15 period, you know, for the Commission to determine this
16 case. I don't know if I have that with me.

17 MR. BEDELL: I don't know that I do.

18 MR. GOLDSTEIN: But if need be, I will prepare
19 another extension agreement and send it out to
20 Mr. Bedell.

21 JUDGE TEAGUE: Okay.

22 MR. GOLDSTEIN: I thought I had it.

23 JUDGE TEAGUE: Okay. So we're going to do
24 discovery. And then, this case has really been going on
25 for a while and we need set another status so we can get

1 this going.

2 MR. BEDELL: Absolutely.

3 JUDGE TEAGUE: And then if we can't resolve this,
4 we really do need to go for a hearing, you know, because
5 it's been some time. Yeah, this is '10 -- 2010, so ...

6 MR. BEDELL: I understand, your Honor.

7 JUDGE TEAGUE: Okay. Then do you-all have a date
8 where you want to set another status?

9 MR. GOLDSTEIN: Well, on the theory that it will be
10 about 60 days out for discovery to go back and forth
11 with responses, perhaps a short time after that, Judge?
12 Early December, Judge?

13 JUDGE TEAGUE: Okay.

14 MR. GOLDSTEIN: Obviously, as part of our
15 discovery, Judge, we're going to be asking certain
16 questions with respect to the allegations in our third
17 affirmative defense, just so that Mr. Bedell is aware of
18 that.

19 MR. BEDELL: That's anticipated.

20 MR. GOLDSTEIN: Yes.

21 MR. BEDELL: And you know the answers we gave in
22 our responses, but we'll cross those bridges when we
23 come to them.

24 MR. GOLDSTEIN: And so we may have to deal with
25 certain motions at the next status hearing, and I also

1 assume that once there is a ruling on the motion to
2 dismiss the indictment and the criminal proceeding,
3 Mr. Bedell will make us aware of it and that may or may
4 not change your ruling, but I think we ought to have a
5 ruling on the motion to strike the affirmative defenses
6 well prior to the next status date so that we can act
7 accordingly with respect to discovery.

8 JUDGE TEAGUE: That's reasonable.

9 And you can let us know?

10 MR. BEDELL: Absolutely.

11 JUDGE TEAGUE: Okay. And this was just filed, you
12 said --

13 MR. BEDELL: Yesterday.

14 JUDGE TEAGUE: -- yesterday?

15 MR. BEDELL: Actually, it was heard yesterday. It
16 was filed on the 18th, amended yesterday.

17 JUDGE TEAGUE: Okay.

18 MR. GOLDSTEIN: Is this -- May I ask whether the
19 document you handed me this afternoon is the amended
20 motion to dismiss the indictment?

21 MR. BEDELL: I thought the amended was attached to
22 the back. If it's not, the only amendment -- I will
23 provide it to you. The only amendment was additional
24 authority.

25 MR. GOLDSTEIN: Oh, okay.

1 MR. BEDELL: And I will provide that to you. I
2 thought it was in here, my mistake. I apologize.

3 JUDGE TEAGUE: As a courtesy, would you mind
4 e-mailing me?

5 MR. BEDELL: Absolutely.

6 JUDGE TEAGUE: Okay. And did you-all pick a date
7 in December?

8 MR. GOLDSTEIN: What looks look to you, Greg?

9 MR. BEDELL: I think my week of the 9th is wide
10 open, if that works for you.

11 MR. GOLDSTEIN: How about the 10th, Judge?

12 JUDGE TEAGUE: The 10th is fine. Do you want to do
13 11:00?

14 MR. GOLDSTEIN: That's fine, Judge.

15 Is 11:00 o'clock okay?

16 MR. BEDELL: Perfect. Thank you.

17 JUDGE TEAGUE: That works for you?

18 Okay. December 10th at 11:00. Okay. So
19 continue this matter until December 10th at 11:00 a.m.

20 And then as I stated before, I will think
21 about this motion to strike a little bit more, and
22 you-all will conduct some discovery and see where we're
23 at then. Okay?

24 MR. GOLDSTEIN: All right. Thank you very much,
25 Judge.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. BEDELL: Thank you.

JUDGE TEAGUE: Thank you.

(Which were all the proceedings
had at this time in the
above-entitled cause.)

1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF COOK)
4

5 Kim A. Kocimski, being first duly sworn, on
6 oath says that she is a Certified Shorthand Reporter
7 doing business in the City of Chicago, County of Cook
8 and the State of Illinois;

9 That she reported in shorthand the proceedings
10 had at the foregoing hearing;

11 And that the foregoing is a true and correct
12 transcript of her shorthand notes so taken as aforesaid
13 and contains all the proceedings had at the said
14 hearing.

15

16

17

KIM A. KOCIMSKI, CSR

18 CSR No. 084-004610

19 SUBSCRIBED AND SWORN TO
20 before me this 11th day of
October, A.D., 2013.

21

22 NOTARY PUBLIC

23

24

25