

**OFFICIAL FILE
ILLINOIS COMMERCE COMMISSION**

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

ORIGINAL

Chet DeKing,

:

Case No. 13-0186

Complainant,

:

v.

:

Commonwealth Edison
Company,

:

Respondent.

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VERIFIED SECOND AMENDED COMPLAINT

Now comes Complainant, Chet DeKing, and for his Second Amended
Complaint states as follows:

ILLINOIS COMMERCE
COMMISSION
2013 NOV 12 1 P
CHIEF CLERK'S OFFICE

1. Complainant Chet DeKing is the owner of property located at 44w071 Hazel Crest Drive, Sugar Grove, Illinois. It is his primary residence. He is a customer of Commonwealth Edison Company ("**ComEd**").
2. This case involves ComEd's callous disregard for Mr. DeKing's property rights.
3. Between 1990 and 1991, Mr. DeKing planted 12 Blue Spruce Evergreen trees along the property line between his property and his neighbor's.
4. The line of trees effectively created an aesthetically pleasing division, providing shade and a sight barrier to his neighbor's backyard as well as other benefits, thereby enhancing the value of the property.
5. The line of trees was on or near an easement that allowed ComEd to

maintain electrical lines above the easement, which they did.

6. At their lowest point, i.e. when subject to heat or other conditions that would cause the lines to hang to their lowest point, the electrical lines were at least 30 feet (and probably more) above the tops of the trees. The trees did not endanger, pose a reliability concern, or interfere with the electrical lines in any way.

7. The Easement dated December 4, 1969 and accompanying documents provided by Respondent, are attached (with page numbers added) as **Exhibit A**.

8. In relevant part, the Easement grants Commonwealth Edison the right of way “for the transmission of electrical energy....together with the right to cut, control, trim or eliminate, and at its option, remove....any trees saplings, overhanging branches, shrubs, bushes or other obstacles or obstructions which may *endanger the safety or interfere* with the use or enjoyment of any tower, wire, cable or facility” along the easement. Exhibit A, p. 6, emphasis supplied.

9. The Easement reserved the right to use the surface of the Easement for “landscaping purposes” provided that the landscaping does not interfere with the electrical lines. Exhibit A, p. 6.

10. In addition to the constraints in the easement, ComEd is also subject to the provision of 220 ILCS 5/8-505.1 which governs ComEd’s non-emergency vegetation management activities.

11. Mr. DeKing received the attached NOTICE OF TREE CONDITION

sometime in early October 2012. **Exhibit B** (the handwritten notes on Exhibit B were not in the original, but were added by Mr. DeKing).

12. Concerned about what the Notice meant, Mr. DeKing tried calling the number listed on the Notice beginning in mid-October. Initially, no one answered the number, nor did it go to voicemail.

13. When he was finally able to talk to someone some weeks later, that person was not able to help him, but said he would have someone else contact Mr. DeKing. That never happened.

14. Despite repeated attempts by Mr. DeKing to contact ComEd about the Notice, he was unable to talk to anyone until November 19, 2012, at which time he was advised, for the first time, that ComEd intended to remove the trees.

15. On November 21, 2012, ComEd cut down Mr. DeKing's trees, leaving behind a row of stumps.

16. The tree removal was wrongful for the following reasons:

a. The trees did not interfere with or endanger the safety of the electrical wires overhead.

b. Contrary to the Easement, ComEd violated Mr. DeKing's right to use the Easement for landscaping purposes that did not interfere with ComEd's electrical lines.

c. In cutting down the trees instead of trimming them (or doing nothing), ComEd failed to follow the most current tree care and maintenance standard practices set forth in ANSI A300 published by

the American National Standards Institute, contrary to 220 ILCS 5/8-505.1(1).

d. ComEd violated 220 ILCS 5/8-505.1's requirement that "Vegetation management activities by an electric public utility shall not alter, trespass upon, or limit the rights of any property owner."

e. The Notice provided to Mr. DeKing was wholly inadequate, as more fully demonstrated below.

17. Except for being provided in the correct time period, the Notice was, in every other respect, deficient.

18. The Notice was not really a notice at all. Contrary to 220 ILCS 5/8-505.1(2), instead of notifying Mr. DeKing of ComEd's planned vegetation management activities, i.e. that it intended to cut down Mr. DeKing's trees, it only informed him that ComEd had identified "recent" tree planting which ComEd "**suggested**" Mr. DeKing "**may wish to consider**" relocating an unspecified distance back from the power lines.

19. Although the Notice states that "Trees that pose a reliability concern to the power lines will be subject to future removal by ComEd," nothing in the Notice indicates that Mr. DeKing's trees posed a reliability concern to power lines or that ComEd planned to cut them down.

20. Posing a reliability "concern" is not a sufficient basis to remove trees.

21. On information and belief, ComEd failed to provide notice of vegetation management activities to the mayor or chairman of the county board where the activity was to occur as required by 220 ILCS 5/8-505.1(2)(A) and (B).

22. On information and belief, ComEd failed to notify affected customers including Mr. DeKing, via publication as required by 220 ILCS 5/8-505.1(2)(D).

23. The Notice also failed to contain the following items required by 220 ILCS 5/8-505.1:

a. The address of a website and a toll-free telephone number at which a written disclosure of all dispute resolution opportunities and processes, rights, and remedies provided by the electric public utility may be obtained. The web site reference went to a “page not found” site, and no one Mr. DeKing talked to at the number (when he finally got through to someone) provided him with any material related to dispute resolution opportunities.

b. A statement that the customer and the property owner may appeal the planned vegetation management activities through the electric public utility and the Illinois Commerce Commission.

c. A toll-free telephone number through which communication may be had with a representative of the electric public utility regarding the vegetation management activities.

d. The telephone number of the Consumer Affairs Officer of the Illinois Commerce Commission.

e. A statement that circuit maps and common addresses of the area to be affected by the vegetation management activities are on file with the office of the mayor of an affected municipality or his or her designee and the office of the county board chairman of an affected

county or his or her designee.

24. Had proper notice been given, Mr. DeKing could have moved the trees, or he could have followed dispute resolution procedures to prevent the decimation of his trees, or he could have sought the assistance of an arborist in reducing the height of the trees, or he could have sought an injunction in the circuit courts or an appropriate order from the Illinois Commerce Commission.

25. 220 ILCS 5/8-505.1 alters the Commission's jurisdiction, allowing it to resolve disputes involving vegetation management.

26. As a result of ComEd's wrongfully cutting down his trees, Mr. DeKing has suffered damages in an amount to be proven but consisting of:

- a. The diminution of value of his property in an amount believed to be at least \$50,000.
- b. The loss of enjoyment of his property in an amount of at least \$50,000.
- c. The cost of removing the stumps ComEd left behind, about \$700.
- d. The cost of planting new trees, about \$11,000. The largest trees that could be planted would be less than half the size of the cut down trees.

27. Based on the deficient Notice and the facts surrounding the loss of Mr. DeKing's trees, ComEd's employees, managers and contractors don't know how to interpret easements and don't know what the notice requirements of 220 ILCS 5/8-505.1 are, or simply don't care. It is the Commission's responsibility

to protect Illinois citizens from ComEd's ignorance or indifference to their rights.

28. Therefore, in addition to monetary damages, Mr. DeKing respectfully requests that the Commission order that:

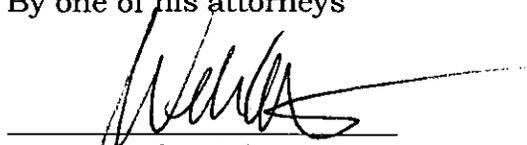
- a. ComEd cease interfering with Mr. DeKing's (and successive owners') landscaping, including any future trees planted on DeKing's property;
- b. ComEd refrain from cutting down trees on private property unless there is no reasonable alternative;
- c. ComEd cease all non-emergency vegetation management activities until the Commission can review ComEd's non-emergency vegetation management policies and procedures and satisfy itself that Illinois property owner's rights will be properly respected by ComEd;
- d. all of ComEd's employees and contractors who are involved in vegetation management to undergo remedial training in 220 ILCS 5/8-505.1's notice requirements;
- e. ComEd have meaningful dispute resolution procedures;
- f. ComEd provide written disclosure of all dispute resolution opportunities and processes, rights, and remedies provided by the electric public utility *with* any 220 ILCS 5/8-505.1 notice;
- g. ComEd obtain a legal opinion from an attorney licensed in Illinois before relying on its interpretation of any easement it relies on in managing vegetation;

29. Since other property owners in Illinois will be the primary beneficiaries if the Commission rules in DeKing's favor, DeKing should be entitled to reasonable costs and attorney fees for pursuing this action.

WHEREFORE, Complainant Chet DeKing respectfully requests that the Commission award him damages sufficient to compensate him for the wrongful loss of his trees, award costs and attorney fees and issue an order against ComEd as outlined in ¶28 above and such other relief that the Commission deems just.

Dated: November 7, 2013

Chet DeKing
By one of his attorneys



Wesley Johnson

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**Complainant agrees to accept service by electronic means to
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VERIFICATION

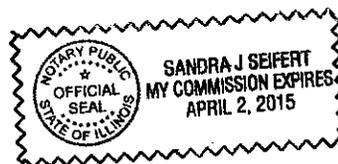
Under penalties as provided by 735 ILCS 5/1-109, the undersigned certifies that the factual statements in this Verified Amended Formal Complaint are true and correct, and that allegations on information and belief are believed by him to be true.

Chet DeKing Date: 11/7/13
Chet DeKing

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, CERTIFY THAT Chet DeKing personally known to me to be the same person(s) whose name(s) are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 7TH day of November, 2013

Sandra J Seifert
Notary Public



CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that he caused a copy of the attached **Verified Second Amended Complaint** to be served via U.S. Mail and, where indicated, by hand delivery, email, facsimile, or overnight carrier upon the following:

Mark Goldstein
3019 Province Circle
Mundelein, IL 60060
VIA EMAIL:
mlglawoffices@aol.com

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

Bradley R. Perkins
Exelon Business Services Co.
10 S. Dearborn St.
49th Floor
Chicago, Illinois 60603
(312) 394-26320
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Via Hand Delivery
Mr. John T. Riley
Administrative Law Judge
Illinois Commerce Commission
160 N. LaSalle St., Ste. C-800
Chicago, IL 60601

Matthew L. Harvey
Office of General Counsel
Illinois Commerce Commission
160 N. LaSalle St., Ste. C-800,
Chicago, IL 60601-3104,
VIA EMAIL:
mharvey@icc.illinois.gov

Dated: November 8, 2013



Wesley Johnson