

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**


**JON CHVALOVSKY,** )  
 )  
 **Complainant,** )  
 )  
 **v.** ) **PCB NO. 10-13**  
 ) **(Enforcement-Noise)**  
 **COMMONWEALTH EDISON, FRANK** )  
 **CLARK AND TIM JOHNSON,** )  
 )  
 **Respondents.** )

**NOTICE OF ELECTRONIC FILING**

TO: Jon Chvalovsky  
9251 Latrobe  
Skokie, Illinois 60077

Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center, Suite 11-500  
100 W. Randolph Street  
Chicago, IL 60601

PLEASE TAKE NOTICE that on November 19, 2010, I electronically filed with the Clerk of the Pollution Control Board, Respondents' Answer to Complaint, a copy of which is attached hereto and herewith served upon you.

  
\_\_\_\_\_  
Bill S. Forcade  
Gabrielle Sigel  
Katherine M. Rahill  
Attorney for Respondents  
Jenner & Block LLP  
353 N. Clark Street  
Chicago, IL 60654-3456  
312/222-9350

Dated: November 19, 2010

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

|                                   |   |                            |
|-----------------------------------|---|----------------------------|
| <b>JON CHVALOVSKY,</b>            | ) |                            |
|                                   | ) |                            |
| <b>Complainant,</b>               | ) |                            |
|                                   | ) |                            |
| <b>v.</b>                         | ) | <b>PCB NO. 2010-013</b>    |
|                                   | ) | <b>(Enforcement-Noise)</b> |
| <b>COMMONWEALTH EDISON, FRANK</b> | ) |                            |
| <b>CLARK AND TIM JOHNSON,</b>     | ) |                            |
|                                   | ) |                            |
| <b>Respondents.</b>               | ) |                            |

**ANSWER TO COMPLAINT**

**NOW COME** the Respondents, Commonwealth Edison, Frank Clark and Tim Johnson, by and through their attorneys, Jenner & Block LLP, and answer the Complainant's Complaint as follows:

1. Your name, street address, county, state: Jon Chvalovsky, 9251 Latrobe, Skokie, IL 60077.

**RESPONSE:** Respondents admit that Jon Chvalovsky is the complainant and that he has reported his address as 9251 Latrobe, Skokie, IL 60077.

2. Place where you can be contacted during normal business hours (if different from above): 847 966-7437 above.

**RESPONSE:** Respondents admit that the Complainant has identified 847 966-7437 as the place where he can be contacted during normal business hours.

3. Name and address of respondent (alleged polluter): Commonwealth Edison, Frank Clark, Tim Johnson, 440 S. LaSalle, Chicago, IL 60605-1028.

**RESPONSE:** Commonwealth Edison admits that it is headquartered at 440 S. LaSalle, Chicago, IL 60605-1028. Commonwealth Edison further states that it will accept, on behalf of all the Respondents, documents and communications relating to this lawsuit; provided that the

same include the case name and caption above and are addressed to Commonwealth Edison – Legal Department, 440 S. LaSalle, Chicago, IL 60605-1028.

4. Describe the type of business or activity that you allege is causing or allowing pollution (*e.g.*, manufacturing company, home repair shop) and give the address of the pollution source if different than the address above: Noise - transformer buzzing 24 hours a day 7 days a week in back of my house in transmission lines on Church and Laramie, Skokie, IL. Been complaining since installed Village of Skokie - Com Ed to Eric Duray who took the job from guy before who I dealt with from Day 1.

**RESPONSE:** Respondents admit that Commonwealth Edison operates transmission lines in the vicinity of Church Street and Laramie Avenue in Skokie, Illinois, and that Eric Duray is an employee of Commonwealth Edison. As to the statement concerning Complainant's communications, Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegation and, therefore, deny the same. Respondents deny all remaining allegations of Paragraph 4.

5. List specific sections of the Environmental Protection Act, Board regulations, Board order, or permit that you allege have been or are being violated: 415 ILCS 5/23, 415 ILCS 5/24 and 415 ILCS 5/25.

**RESPONSE:** The statements in Paragraph 5 are legal conclusions to which a response from Respondents is neither necessary nor appropriate. To the extent an answer is appropriate, Respondents deny the allegations in Paragraph 5.

6. Describe the type of pollution that you allege (*e.g.*, air, odor, noise, water, sewer back-ups, hazardous waste) and the location of the alleged pollution. Be as specific as you reasonably can in describing the alleged pollution: transformer in power station in back of house 7 days a week 24 hours a day.

**RESPONSE:** Respondents deny the allegations of Paragraph 6.

7. Describe the duration and frequency of the alleged pollution. Be as specific as you reasonably can about when you first noticed the alleged pollution, how frequently it occurs, and whether it is still continuing (include seasons of the year, dates, and times of day if known): 7 days a week 24 hours a day since installed.

**RESPONSE:** Respondents deny the allegations of Paragraph 7.

8. Describe any bad effects that you believe the alleged pollution has or has had on human health, on plant or animal life, on the environment, on the enjoyment of life or property, or on any lawful business or activity: Buzzing 7 days a week 24 hours a day - at night when I want to go to sleep - keeps me from going to sleep - because of buzzing.

**RESPONSE:** Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8 and, therefore, deny the same.

9. Describe the relief that you seek from the Board (*e.g.*, an order that the respondent stop polluting, take pollution abatement measures, perform a cleanup, reimburse cleanup costs, change its operation, or pay a civil penalty (note that the Board cannot order the respondent to pay your attorney fees or any out-of-pocket expenses that you incur by pursuing an enforcement action)): Some kind of sound proofing to muffle noise to quiet the buzzing.

**RESPONSE:** The statements in Paragraph 9 are legal conclusions to which a response from Respondents is neither necessary nor appropriate. Further, Respondents are without knowledge or information sufficient to form a belief as to the nature of the relief sought by Complainant. To the extent an answer is appropriate, Respondents deny this paragraph and deny that the Complainant is entitled to any relief from Respondents.

10. Identify any identical or substantially similar case you know of that is already pending before the Board or in another forum against this respondent for the same alleged pollution (note that you need not include any complaints made to the Illinois Environmental Protection Agency or an unit of local government): None.

**RESPONSE:** Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 10 and, therefore, deny the same.

11. State whether you are representing (a) yourself as an individual or (b) your unincorporated sole proprietorship. Also, state whether you are an attorney and, if so, whether you are licensed and registered to practice law in Illinois. (Under Illinois law, an association, citizens group, unit of local government, or corporation must be represented before the Board by an attorney. Also, an individual who is not an attorney cannot represent another individual or other individuals before the Board. However, an individual who is not an attorney is allowed to represent (a) himself or herself as an individual or (b) his or her unincorporated sole proprietorship, though the individual may prefer having attorney representation): Jon Chvalovsky.

**RESPONSE:** Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11 and, therefore, deny the same.

**AFFIRMATIVE DEFENSES**

Respondents deny all allegations of alleged wrongdoing by themselves and further deny all allegations which otherwise have not been expressly admitted in this Answer. In addition, Respondents assert the following affirmative defenses. Respondents do not assume the burden of proof on these defenses where substantive law provides otherwise.

**FIRST AFFIRMATIVE DEFENSE: LACHES**

In the alternative, without admitting any of the Complainant's allegations that they have denied or otherwise contradicting their answers and solely by way of affirmative and/or additional defense, Respondents allege as follows:

1. The Commonwealth Edison substation adjacent to Complainant's residence as well as the transmission lines in the area of Church Street and Laramie Avenue in Skokie, Illinois, were constructed in 1961.
2. No significant changes have been made to the substation or transmission lines since 1974 and, as a result, any associated noise has not changed significantly since 1974.
3. Upon information and belief, Complainant acquired the property at 9251 Latrobe, Skokie, Illinois 60077 no later than December, 1999.
4. Therefore, any alleged noise issues experienced by Complainant have existed for at least eleven years.
5. Respondents have been prejudiced by unreasonable delay in filing this complaint.
6. As such, Complainant's claims are barred in whole or in part by the doctrine of laches.

Wherefore, Respondents ask that the Board enter an order denying Complainant any and all of the relief he seeks herein; and such other and further relief to which Respondents are entitled.

**SECOND AFFIRMATIVE DEFENSE: FAILURE TO STATE A CLAIM**

In the alternative, without admitting any of the Complaint's allegations that they have denied or otherwise contradicting their answers and solely by way of affirmative and/or additional defense, Respondents allege as follows:

1. Complainant does not assert any facts demonstrating that Respondents emitted any noise "that *unreasonably interferes* with the enjoyment of life or with any lawful business or activity."
2. Moreover, Respondents did not emit any noise "that *unreasonably interferes* with the enjoyment of life or with any lawful business or activity." 415 ILCS 5/25.
3. Lastly, Respondents have undertaken all reasonable steps to reduce any noise emanating from the transmission lines and/or substation.
4. As such, Complainant's claims are barred for failure to state a claim upon which relief can be granted.

Wherefore, Respondents ask that the Board enter an order denying Complainant any and all of the relief he seeks herein; and such other and further relief to which Respondents are entitled.

**THIRD AFFIRMATIVE DEFENSE: ESTOPPEL**

In the alternative, without admitting any of the Complaint's allegations that they have denied or otherwise contradicting their answers and solely by way of affirmative and/or additional defense, Respondents allege as follows:

1. The Commonwealth Edison substation located adjacent to Complainant's residence as well as the transmission lines in the area of Church Street and Laramie Avenue in Skokie, Illinois, were constructed in 1961.

2. No significant changes have been made to the substation or transmission lines since 1974 and, as a result, any associated noise has not changed significantly since 1974.

3. Upon information and belief, Complainant acquired the property at 9251 Latrobe, Skokie, Illinois 60077 no later than December, 1999.

4. Complainant knowingly purchased a house in close proximity to the transmission lines and substation at issue.

5. As such, Complainant's claims are barred by estoppel.

Wherefore, Respondents ask that the Board enter an order denying Complainant any and all of the relief he seeks herein; and such other and further relief to which Respondents are entitled.

**FOURTH AFFIRMATIVE DEFENSE: ASSUMPTION OF RISK**

In the alternative, without admitting any of the Complainant's allegations that they have denied or otherwise contradicting their answers and solely by way of affirmative and/or additional defense, Respondents allege as follows:

1. The Commonwealth Edison substation located adjacent to Complainant's residence as well as the transmission lines in the area of Church Street and Laramie Avenue in Skokie, Illinois, were constructed in 1961.

2. No significant changes have been made to the substation or transmission lines since 1974 and, as a result, any associated noise has not changed significantly since 1974.

3. Upon information and belief, Complainant acquired the property at 9251 Latrobe, Skokie, Illinois 60077 no later than December, 1999.

4. Complainant knew or should have known with reasonable diligence of the existence of the transmission lines and substation within close proximity to his house when he purchased the property.

5. In purchasing a home in close proximity to transmission lines and a substation, Complainant knowingly, Complainant assumed the risk of encountering some level of noise from the transmission lines and/or substation.

Wherefore, Respondents ask that the Board enter an order denying Complainant any and all of the relief he seeks herein; and such other and further relief to which Respondents are entitled.

**FIFTH AFFIRMATIVE DEFENSE: PRIMARY JURISDICTION**

In the alternative, without admitting any of the Complainant's allegations that they have denied or otherwise contradicting their answers and solely by way of affirmative and/or additional defense, Respondents allege as follows:

1. Pursuant to the Public Utilities Act, 220 ILCS 5/et seq., and the Electric Supplier Act, 220 ILCS 30/et seq., the Illinois Commerce Commission has authority over public utilities supplying electricity in the State of Illinois.

2. Through this authority, the Illinois Commerce Commission regulates the provision of electricity in the State of Illinois including the location and operation of substations and related transmission lines.



3. In order for Commonwealth Edison to make any significant changes to the location and/or operation of its substation or transmission lines, Commonwealth Edison would need to seek leave of the Illinois Commerce Commission to do so.

4. To the extent the Complainant seeks to have the substation or transmission lines (including any principal equipment used in relation to either) relocated or substantially altered, or the Board concludes that such relocation or alteration is warranted, the primary jurisdiction over such a relocation or alteration lies with the Illinois Commerce Commission.

Wherefore, Respondents ask that the Board enter an order denying Complainant any and all of the relief he seeks herein to the extent it falls within the primary jurisdiction of the Illinois Commerce Commission; and such other and further relief to which Respondents are entitled.

**SIXTH AFFIRMATIVE DEFENSE: PREEMPTION**

In the alternative, without admitting any of the Complaint's allegations that they have denied or otherwise contradicting their answers and solely by way of affirmative and/or additional defense, Respondents allege as follows:

1. Pursuant to the Public Utilities Act, 220 ILCS 5/et seq., and the Electric Supplier Act, 220 ILCS 30/et seq., the Illinois Commerce Commission has authority over public utilities supplying electricity in the State of Illinois.

2. Through this authority, the Illinois Commerce Commission regulates the provision of electricity in the State of Illinois including the location and operation of substations and related transmission lines.

3. In order for Commonwealth Edison to make any significant changes to the location and/or operation of its substation or transmission lines, Commonwealth Edison would need to seek leave of the Illinois Commerce Commission to do so.

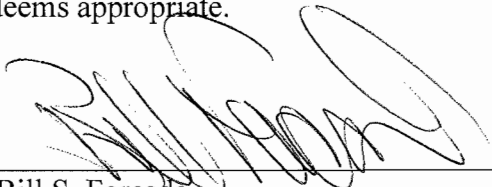
4. To the extent the Complainant seeks to have the substation or transmission lines (including any principal equipment used in relation to either) relocated or substantially altered, or the Board concludes that such relocation or alteration is warranted, the power of the Illinois Pollution Control Board to grant such relief is preempted by the authority of the Illinois Commerce Commission.

Wherefore, Respondents ask that the Board enter an order denying Complainant any and all of the relief he seeks herein to the extent it is preempted by the Public Utilities Act and/or Electric Supplier Act; and such other and further relief to which Respondents are entitled.

**ADDITIONAL AFFIRMATIVE DEFENSES**

Respondents reserve the right to add further additional defenses after receiving information from Complainant through discovery.

WHEREFORE, Respondents respectfully request that the Board enter an order in favor of Respondents and any such other relief as the Board deems appropriate.



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Bill S. Forcade

Bill S. Forcade  
Gabrielle Sigel  
Katherine M. Rahill  
Jenner & Block LLP  
Attorney for Respondents  
353 N. Clark Street  
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| <b>Respondents.</b>               | ) |                            |

**PROOF OF SERVICE**

**NOW COME** the Respondents, Commonwealth Edison, Frank Clark and Tim Johnson, by and through their attorney, and pursuant to the Board's procedural rules, provides proof of service of the attached Respondents' Answer to Complaint and Notice of Electronic Filing upon Jon Chualovsky, 9251 Latrobe, Skokie, Illinois 60077 and Bradley P. Halloran, Hearing Officer, Illinois Pollution Control Board, James R. Thompson Center, Suite 11-500, 100 W. Randolph Street, Chicago, Illinois 60601, by having a true and correct copy affixed with proper postage placed in the U.S. Mail at Jenner & Block LLP, 353 North Clark Street, Chicago, Illinois 60654-3456, at or before 5:00 p.m., on November 19, 2010.

  
\_\_\_\_\_  
Bill S. Forcade

Bill S. Forcade  
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Katherine M. Rahill  
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