



**Chapter 24 Electrical Injuries**  
Lawrence R. Kream

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# 24

## Electrical Injuries

**LAWRENCE R. KREAM**  
 Law Office of Lawrence R. Kream, LLC  
 Chicago

### A. [24.1] Cause of Action

A cause of action for damages for injuries caused by contact with electrical power lines.

### B. [24.2] What Law Controls

Claims for damages caused by electrical injuries arise under common-law negligence; the Illinois Underground Utility Facilities Damage Prevention Act, 220 ILCS 50/1, *et seq.*; the Public Utilities Act, 220 ILCS 5/1-101, *et seq.*, especially §5-201; and product liability.

#### 1. [24.3] Common-Law Negligence

In general, a public utility has a duty to safely position its power lines and/or has a duty to insulate them or place protective guards around them in areas where human contact is foreseeable. *Merlo v. Public Service Company of Northern Illinois*, 381 Ill. 300, 45 N.E.2d 665, 674 (1942) (utility owes duty to every person who, in exercising lawful occupation in place he or she has legal right to be is liable to come in contact with wires, to see that wires are properly placed, insulated, and maintained in proper condition); *German v. Illinois Power Co.*, 115 Ill.App.3d 977, 451 N.E.2d 903, 71 Ill.Dec. 749 (5th Dist. 1983) (duty to warn that weather-proofing covering that gave deceptive appearance that wires were insulated was not actually insulation).

A public utility also can be liable in negligence for placing uninsulated power lines too close to structures where it is foreseeable people will contact the lines. *In re Estate of Martin*, 202 Ill.App.3d 659, 559 N.E.2d 1125, 147 Ill.Dec. 785 (4th Dist. 1990) (utility liable for constructing power lines only 13 feet above existing grain bin); *Schmall v. Village of Addison*, 171 Ill.App.3d 344, 525 N.E.2d 258, 121 Ill.Dec. 452 (2d Dist. 1988) (worker installing light pole injured when crane carrying pole contacted overhead wires).

A landowner can be liable in negligence for failing to warn of or protect against overhead power lines. *Watkins v. Mt. Carmel Public Utility Co.*, 65 Ill.App.3d 493, 519 N.E.2d 10, 116 Ill.Dec. 420 (5th Dist. 1988) (landowner had duty to protect worker on top of oil storage tank from electrical injury where landowner constructed tanks below existing power lines, but utility owed no duty to worker); *Sprague v. Commonwealth Edison Co.*, 59 Ill.App.3d 342, 375 N.E.2d 493, 16 Ill.Dec. 620 (1st Dist. 1978) (evidence presented jury question on whether owner of

electrical plant under construction failed to inspect construction site and warn of overhead wires). This is especially true where the owner or occupier, as opposed to a utility, installed uninsulated power lines and failed to warn that the lines are uninsulated. *O'Rourke v. Oehler*, 187 Ill.App.3d 572, 543 N.E.2d 546, 135 Ill.Dec. 163 (4th Dist. 1989).

The circumstances under which a duty to the injured person arises are varied and often turn on whether the injury was “objectively foreseeable” or was “open and obvious.”

Examples of where injury was held not to be objectively foreseeable are *Gnaust v. Illinois Power Co.*, 62 Ill.2d 456, 343 N.E.2d 465 (1976) (CB antenna installer electrocuted when antenna contacted overhead wires); *Tinder v. Illinois Power Co.*, 325 Ill.App.3d 606, 758 N.E.2d 483, 259 Ill.Dec. 360 (4th Dist. 2001) (worker removing antenna located under power lines knew of danger of contacting wires); *Dinkins v. Ebbersten*, 234 Ill.App.3d 978, 600 N.E.2d 873, 175 Ill.Dec. 630 (4th Dist. 1992) (landowner had no duty to warn painter of overhead wires); *Icenogle v. Myers*, 167 Ill.App.3d 239, 521 N.E.2d 163, 118 Ill.Dec. 95 (3d Dist. 1988) (not objectively foreseeable that worker using pole to spray paint a storage bin would contact overhead power lines); *Carroll v. Commonwealth Edison Co.*, 147 Ill.App.3d 909, 498 N.E.2d 645, 101 Ill.Dec. 321 (1st Dist. 1986) (plaintiff contacted power line while installing lightning rod).

Examples of where injury was held to be objectively foreseeable are *Lee v. CTA*, 152 Ill.2d 432, 605 N.E.2d 493, 178 Ill.Dec. 699 (1992) (intoxicated man electrocuted when he urinated against electrified third rail of street-level rail line); *German, supra* (duty to warn weatherproof coating on wires was not insulation); *O'Rourke, supra* (owner and lessee of farm failed to warn painter overhead wires were uninsulated); *Watkins, supra* (duty to protect worker on top of oil storage tanks built under power lines); *Estate of Martin, supra* (utility liable for installing uninsulated wires too close to grain bin); *Nelson v. Commonwealth Edison Co.*, 124 Ill.App.3d 655, 465 N.E.2d 513, 80 Ill.Dec. 401 (2d Dist. 1984) (ten-year-old boy playing in park owned by utility injured when copper wire with which child was playing came near power lines 30 feet above park).

## 2. [24.4] Underground Utility Facilities Damage Prevention Act

The Illinois Underground Utility Facilities Damage Prevention Act, 220 ILCS 50/1, *et seq.*, requires that anyone excavating must contact the Statewide One-Call Notice System to ask to have utilities mark underground power lines or pipes. 220 ILCS 50/4. The statute specifies that the approximate location of electric lines must be marked with white paint, flags, stakes, etc., and defines a “tolerance zone” of at least three feet, but not wider than the underground facility, within which digging must be done with “extra care and precaution.” *Id.*; 220 ILCS 50/2.7. Pursuant to 220 ILCS 50/9:

**When it is shown by competent evidence in any action for damages to persons, material or equipment brought by persons undertaking excavation or demolition acting in compliance with the provisions of this Act that such damages resulted from the failure of the owners and operators of underground facilities or CATS [community antenna television system] facilities to comply with the provisions of this Act, those owners and operators shall be deemed prima facie guilty of negligence.**

However, the Statewide One-Call Notice System and its employees are not liable unless they are guilty of willful and wanton misconduct. 220 ILCS 50/8(c).

### 3. [24.5] Public Utilities Act

The Public Utilities Act, 220 ILCS 5/1-101, *et seq.*, creates a cause of action for electrical injuries caused by the violation of regulations promulgated by the Illinois Commerce Commission (ICC) under this statute. The Act creates a cause of action for compensatory damages and punitive damages and provides for the recovery of attorneys' fees. Under 220 ILCS 5/5-201:

**In any case any public utility shall do, cause to be done or permit to be done any act, matter or thing prohibited, forbidden or declared to be unlawful, or shall omit to do any act, matter or thing required to be done either by any provisions of this Act or any rule, regulation, order or decision of the [Commerce] Commission, issued under Authority of this Act, the public utility shall be liable to the persons or corporations affected thereby for all loss, damages or injury caused thereby or resulting therefrom, and if the court shall find that the act or omission was wilful, the court may in addition to the actual damages, award damages for the sake of example and by the way of punishment. An action to recover for such loss, damage or injury may be brought in the circuit court by any person or corporation.**

**In every case of a recovery of damages by any person or corporation under the provisions of this Section, the plaintiff shall be entitled to a reasonable attorney's fee to be fixed by the court, which fee shall be taxed and collected as part of the costs in the case.**

The ICC incorporated most of the National Electrical Safety Code (NESC) into the Act. 83 Ill.Admin. Code §305.20(b). The NESC is published by the Institute of Electrical and Electronics Engineers, Inc. This means that a violation of the NESC is a violation of the Act, which subjects the utility to liability for compensatory damages and attorneys' fees. A willful violation of the NESC subjects a utility to liability for punitive damages under §5-201 of the Act. The current version of 83 Ill.Admin. Code §305.20 was enacted in 2003 and incorporated the 2002 version of the NESC into the Act.

The NESC has been amended many times over the years. 83 Ill.Admin. Code §305.20 has also been amended periodically to incorporate different versions of the NESC. The ICC did not always incorporate the most current version of the NESC. Notably, there is a 2007 version of the NESC (see generally <http://standards.ieee.org/nesc>), but to date, the ICC has incorporated only the 2002 version of the NESC into the Act. While newer versions of the NESC may be relevant to show negligence, only violations of the appropriate version of the NESC as incorporated by 83 Ill.Admin. Code §305.20 in effect at the time of the injury are violations of §5-201 of the Act.

A violation of §5-201, *i.e.*, a breach of the NESC, is negligence per se. *Knyal v. Illinois Power Co.*, 169 Ill.App.3d 440, 523 N.E.2d 639, 642, 119 Ill.Dec.883 (4th Dist. 1988) (NESC regulation concerning proximity of wire to building). Conversely, compliance with the NESC does not preclude a finding of negligence. *Schmall v. Village of Addison*, 171 Ill.App.3d 344, 525 N.E.2d 258, 262, 121 Ill.Dec. 452 (2d Dist. 1988); *Cantu v. Utility Dynamics Corp.*, 70 Ill.App.3d 260, 387 N.E.2d 990, 993, 26 Ill.Dec. 160 (1st Dist. 1979).

The term “willful” in §5-201 entails an intentional disregard of the safety of others, which shows a conscious indifference to the consequences of action or inaction. *Mathis v. Burlington Northern, Inc.*, 67 Ill.App.3d 1009, 385 N.E.2d 780, 24 Ill.Dec. 639 (5th Dist. 1978). A plaintiff need not prove that the utility actually intended that harm should ensue. It is enough that the utility was on notice that would alert a reasonable man that substantial danger was involved and the utility failed to take reasonable precautions under the circumstances. *Sprague v. Commonwealth Edison Co.*, 59 Ill.App.3d 342, 375 N.E.2d 493, 16 Ill.Dec. 620 (1st Dist. 1978); *Spence v. Commonwealth Edison Co.*, 34 Ill.App.3d 1059, 340 N.E.2d 550 (1st Dist. 1975). A utility can also be guilty of willful and wanton conduct not only through an error in judgment, but also through a failure to exercise judgment. However, the act or omission must not only be negligent, but must also show an utter indifference to or conscious disregard for the safety of others. *Sprague, supra*, 375 N.E.2d at 498. What constitutes willful and wanton conduct is greatly dependent on the facts of each case and is within the particular province of a jury to consider. *Id.*

Simply inserting the phrase “willful and wanton” before conduct that shows only negligence is not sufficient to state a claim under §5-201. *Mathias, supra*, 385 N.E.2d at 783. Rather, the complaint must set forth facts from which it could be said that the utility’s conduct was willful and wanton.

#### 4. [24.6] Product Liability

Although electricity is not a “product” under strict product liability (*Genaust v. Illinois Power Co.*, 62 Ill.2d 456, 343 N.E.2d 465 (1976); *Fliszar v. Commonwealth Edison Co.*, 173 Ill.App.3d 770, 527 N.E.2d 1016, 123 Ill.Dec. 378 (1st Dist. 1988)), claims against entities other than an electrical utility can be stated under strict product liability (*Harnishfeger Corp. v. Gleason Crane Rentals, Inc.*, 223 Ill.App.3d 444, 585 N.E.2d 166, 165 Ill.Dec. 770 (5th Dist. 1991) (failure to have warning decals on crane regarding overhead power lines); *Augenstine v. Dico Co.*, 135 Ill.App.3d 273, 481 N.E.2d 1225, 90 Ill.Dec. 314 (1st Dist. 1985) (failure to use insulated remote control cable on crane); *Burke v. Illinois Power Co.*, 57 Ill.App.3d 498, 373 N.E.2d 1354, 15 Ill.Dec. 670 (1st Dist. 1978) (failure to have proximity detector on boom of crane that would detect power line)).

The usual rules governing strict product liability apply in electrical injury cases: the product must be unreasonably dangerous when it left the control of the manufacturer or seller, and the injury must be proximately caused by this defect.

**C. Elements****1. [24.7] Common-Law Negligence**

- a. Circumstances exist showing that a duty arises to warn of the presence of power lines, to insulate the lines, or protect the plaintiff against injury from the power lines.
- b. Plaintiff was injured and sustained damages as a proximate result of the defendant's breach of duty.

**2. [24.8] Underground Utility Facilities Damage Prevention Act**

- a. Plaintiff complied with the provisions of 220 ILCS 50/1, *et seq.*
- b. The utility either wrongly advised the plaintiff there were no underground power lines or did not accurately mark the location of the underground lines.
- c. The plaintiff was injured and sustained damages as a proximate result of the defendant's violation of this statute.

**3. [24.9] Public Utilities Act**

- a. 220 ILCS 5/5-201 was in force and applied to the circumstances of the case, and the utility was required to comply with the relevant version of the NESC.
- b. There are facts showing which provisions of the NESC governed the facility causing plaintiff's injury.
- c. There are facts showing why the NESC was violated.
- d. If appropriate, there are facts showing why the violation of the NESC was willful.
- e. Plaintiff was injured and sustained damages as a proximate result of the defendant's (willful) violation of the NESC.
- f. Plaintiff incurred attorneys' fees to bring the action and include a prayer for relief for attorneys' fees.

**4. [24.10] Product Liability**

1. The product was unreasonably dangerous for use near power lines at the time the product left the control of the manufacturer or seller, *e.g.*, failed to have appropriate warnings, failed to have a proximity detector, failed to use insulated control cables, etc.
2. Plaintiff was injured and sustained damages a proximate result of the unreasonably dangerous condition of the product.



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