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COMMONWEALTH EDISON COMPANY)
)
Proposal to implement a competitive)
procurement process by establishing Rider)
CPP, Rider PPO-MVM, Rider TS-CPP and)
revising Rider PPO-MI.)

CHIEF CLERK'S OFFICE

No. 05-0159

**MOTION TO CLARIFY THE PLACE OF HEARING
AND REQUEST THE PLACE OF HEARING BE AT THE
ILLINOIS COMMERCE COMMISSION IN CHICAGO
BY THE PEOPLE OF THE STATE OF ILLINOIS,
THE COOK COUNTY STATE'S ATTORNEY'S OFFICE
AND THE CITIZENS UTILITY BOARD**

Pursuant to 83 Ill. Admin. Code Section 200.190, the People of the State of Illinois, by Lisa Madigan, Attorney General of the State of Illinois, the Cook County State's Attorney's Office, by and through Richard A. Devine, State's Attorney of Cook County, and the Citizens Utility Board hereby request that the place of the August hearing be clarified and request that hearing be held at the Illinois Commerce Commission's ("Commission" or "ICC") Office in Chicago, Illinois. In support we state as follows:

1. The ICC in an Order dated April 9, 2005 provided in part that ComEd's proposed tariff sheets, filed on February 25, 2005, to implement a competitive procurement process shall be suspended up to and including July 24, 2005. ICC Docket No. 05-0159, Commonwealth Edison Company, Proposal to implement a competitive procurement process by establishing Rider CPP, Rider PPO-MVM, Rider TS-CPP and revising Rider PPO-MI Order at 2. In a July 13, 2005 order the ICC extended the suspension up to and including January 24, 2006. ICC Resuspension Order at 1, 05-0159, July 13, 2005.

2. On April 8, 2005 a status was held at the ICC's offices in Springfield, Illinois. Transcript, ICC E-docket 05-0159. Parties were able to participate over the telephone.

3. On June 22, 2005 a notice of continuance was issued canceling the June 23, 2005 status hearing in Springfield, Illinois and rescheduling the status for August 11, 2005 at 1:30 p.m. at the ICC's offices in Springfield, Illinois and parties will be able to participate by telephone. Notice of Continuance of Hearing, June 22, 2005, ICC E-docket 05-0159.

4. On July 5, 2005 an oral argument was heard on a joint petition for interlocutory review at the Commission's Chicago office. On July 13, 2005 as reflected in a notice of commission action dated July 15, 2005 the petition for interlocutory review was denied.

5. A hearing is scheduled in this matter for August 29-September 2, 2005. Common hearings with 05-0160/0161/0162 will be held on September 6-9, 2005. There is no hearing location listed in the ruling containing the hearing dates. Administrative Law Judge's Scheduling and Procedural Ruling in Docket No. 05-0159, ICC E-docket 05-0159.

6. We appreciate the consideration that the ALJ has shown the parties by allowing telephone participation at the previously held status hearing. We also appreciate that the Commission held the oral argument in Chicago, Illinois. Further we also appreciate the availability of telephone participation at the status hearing scheduled for August 11, 2005.

7. It is unclear, whether the ALJ intends to hold the hearings on this docket at the ICC's offices in Springfield, Illinois or Chicago, Illinois.

8. The Public Utilities Act is more specific than the Commission's rules and requires that the Commission holds hearings in the county in which the subject matter is situated or in the case of multiple counties within one or more of such counties or where in the judgment of the Commission is most convenient to the parties.¹ Section 10-104 provides:

All hearings before the Commission or any commissioner or hearing examiner shall be held within the county in which the subject matter of the hearing is situated, or if the subject matter of the hearing is situated in more than one county, then at a place or places designated by the Commission, or agreed upon by the parties in interest, within one or more such counties, or at the place which in the judgment of the Commission shall be most convenient to the parties to be heard. 220 ILCS 5/10-104

9. With respect to the hearing location, the Illinois Commerce Commission's rules of practice provide in part that:

"...Hearings may be held at such reasonable place in the State and at such reasonable time designated by the Commission or Hearing Examiner as may be consistent with the nature of the proceedings, the convenience of the parties and the public interest. A hearing by teleconference may be requested by a party or Staff and allowed by the Hearing Examiner taking into account the purpose for the hearing, the availability of equipment and the circumstances of the parties and the Staff..." 83 Ill.Admin. Code 200.530

10. We hereby request that the Commission hold hearings on this matter at the ICC's offices in Chicago, Illinois. This request includes holding all or part of the hearings

¹ See also: In *The Commerce Commission ex rel. The Danville Brick Company vs. The Cleveland, Cincinnati, Chicago and St. Louis Railway Company*, 320 Ill. 214, 221-222, 150 N.E. 678 (1926) the court stated that: "...What, then, was the reason for adding the third clause, which also authorizes the commission to designate the place of hearing? Obviously, it is redundant so far as the second clause is concerned, and its only purpose was to declare that the commission should have this power in all cases, whether those mentioned in the first clause or the second..."

currently designated as common hearings in Chicago². However, we have no objection to the parties, subject to the ALJ's approval working out a reasonable accommodation for Staff's witnesses from its Springfield office.

11. One of the factors to be considered in selecting the place for the hearing is the convenience of the parties and Cook County is clearly the most convenient county. ComEd is located in Cook County and the surrounding area. As of July 20, 2005, there are 43 witnesses with various pre-filed testimony on e-docket. Out of these 43 witnesses, 34 (or 35) are outside of Springfield. Ten of the witness indicated Chicago, one Oak Brook, eight Springfield, one did not indicate and twenty-three were out of State. Travel to Chicago is significantly more convenient for out state witnesses than travel to Springfield. Similarly, the attorneys representing the agencies signing on to this motion are located in Chicago.³ In challenging budgetary times like these for government and non profit agencies, holding the hearing in Chicago would not only be more convenient but fiscally responsible and perhaps even a necessity.⁴ Furthermore the overwhelming majority of the attorneys are in Chicago. Many of the witnesses are either located in

² While the schedule includes dates designated as common hearings, care needs to be taken to maintain separate records in this matter, as 05-0159 has not been consolidated with any other dockets. It is therefore unclear what witnesses would have identical testimony and cross examination in both dockets. It is our contention that the testimony and cross should remain separate in this docket from any other non-consolidated dockets.

³ The service list on ICC e-docket on July 20, 2005 had 99 entries (not including the eight that had been listed as removed). The addresses were listed in the following locations: In Chicago and region: 60 are listed in Chicago and one in Oak Brook, one in Evanston, one in Willowbrook and one in Wheaton. Two are listed in Springfield, three in Granite City, one in Peoria and one in Decatur, Illinois. Outside Illinois: 28 of those are not in Illinois and have addresses throughout the United State's and one of the twenty-eight is in Canada.

⁴ Currently, the four ICC Staff Attorneys assigned according to the E-docket system are based in the Chicago Office, we recognize that holding a hearing in Chicago may impact on Staff's witnesses and those attorneys that are based in the Springfield office. However, we have no objection for witnesses where there is a minor amount of cross-examination for the witness to testify via a teleconference.

Chicago or out-of-state and it would be much more convenient for them if the hearings are held in Chicago.

12. Turning to the public interest, the consumers that will be impacted by the ICC action in this docket are ComEd's. ComEd's service territory is in Northern Illinois and primarily in Cook and the collar counties. A hearing to determine the extent to which ComEd may receive a rate increase should be held in a location where the ratepayers reside. Clearly, any consumers who would want to observe the hearings would be significantly inconvenienced by having to travel to Springfield. The public interest would be best served by holding hearings in the Chicago office.

CONCLUSION

Based on the foregoing, we respectfully request that the Commission provide that the place of any hearings be at the Illinois Commerce Commission's offices in Chicago, Illinois.

Respectfully submitted,

**The People of the State of Illinois,
by and through LISA MADIGAN,
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July 27, 2005

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ILLINOIS COMMERCE COMMISSION

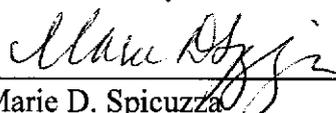
Commonwealth Edison Company :
: :
Proposal to implement a competitive : 05-0159
Procurement process by establishing :
Rider CPP, Rider PPO-MVM, Rider :
TS-CPP and revising Rider PPO-MI. :

NOTICE OF FILING

TO: See Attached Service List.

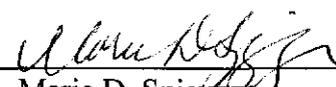
PLEASE TAKE NOTICE that on July 27, 2005 we have filed by sending by Federal Express today to the Chief Clerk of the Illinois Commerce Commission the enclosed Motion to Clarify the Place of Hearing and Request the Place of Hearing be at the Illinois Commerce Commission in Chicago by the People of the State of Illinois, the Cook County State's Attorney's Office and the Citizens Utility Board in the above-captioned docket.

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CERTIFICATE OF SERVICE

I, **MARIE D. SPICUZZA**, hereby certify that a copy of the enclosed Motion to Clarify the Place of Hearing and Request the Place of Hearing be at the Illinois Commerce Commission in Chicago by the People of the State of Illinois, the Cook County State's Attorney's Office and the Citizens Utility Board were served on all parties on the attached list on the 27th day of July 2005 by hand delivery, or Federal Express, or electronic mail, or U.S. first class mail prepaid.

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