

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY)	
)	
Proposal to implement a competitive)	No. 05-0159
procurement process by establishing Rider)	
CPP, Rider PPO-MVM, Rider TS-CPP and)	
revising Rider PPO-MI)	

**RESPONSE OF COMMONWEALTH EDISON COMPANY TO MOTION IN LIMINE
TO EXCLUDE TESTIMONY FILED BY THE PEOPLE OF THE STATE OF ILLINOIS
AND THE COOK COUNTY STATE’S ATTORNEY’S OFFICE, CITIZENS UTILITY
BOARD AND ENVIRONMENTAL LAW AND POLICY CENTER.**

The Motion in Limine to Exclude Testimony (“Motion”) filed by Movants¹ is contrary to both fact and applicable law, untimely, and seeks to exclude admissible and highly relevant evidence. Movants, without any basis in fact or law, seek to exclude all references to the Commission’s Post 2006 Initiative, including all of the publicly available working group reports that reflect the consensus items of each Working Group, and reports prepared by the Commission, its Staff, and its Office of General Counsel. (Mot. at 1). This result is contrary to the well established policy of the Commission that consensus items from its workshop processes are admissible in related proceedings.

Exclusion of this information would also result in an incomplete and misleading record. The truncated record sought by Movants would deprive the Commission of valuable information for understanding and analyzing the complex and critically important issues that must be resolved as the State approaches the end of the statutorily mandated transition period for electric industry restructuring. *See* 220 ILCS 5/16-101 et seq. The Commission has been

¹ The People of the State of Illinois and the Cook County State’s Attorney’s Office, Citizens Utility Board and Environmental Law and Policy Center are hereinafter referred to as “Movants.”

preparing to address these issues for many years, and its Post 2006 Initiative was designed for that very purpose. Nothing requires the Commission to ignore that effort. Indeed it would be foolhardy to do so.

When “a motion in limine is made, the trial judge has broad discretion to grant or deny the motion or choose not to entertain the motion at all.” *Cannon v. William Chevrolet/Geo, Inc.*, 341 Ill. App. 3d 674, 681 (1st Dist. 2003).² Where that motion is ill-founded, seeks to exclude relevant and admissible evidence, or is untimely made as this one is, it should be denied. *Id.*; *Jeanguenat v. Zibert*, 78 Ill. App. 3d 948, 953 (3d. Dist. 1979); *People v. Owen*, 299 Ill. App. 3d 818, 823-24 (4th Dist. 1998). For these and all of the reasons set forth below, it would be an abuse of discretion to grant the Movants’ Motion and to exclude the evidence that such workshops were held and that many consensus items were reached. Thus the Motion must be denied.

ARGUMENT

I. The Movants’ Arguments Are Factually Incorrect.

In their motion, the Movants seek to not only exclude from the record evidence that is both highly relevant and admissible, but also attempt to undo the benefits of the months-long series of workshops held by the Commission that identified and addressed a number of the complex issues facing the Illinois electricity market post-2006. In initiating the Post 2006 process, the Commission planned “meetings and workshops to examine the future of the state’s electric market and identify public policy issues surrounding deregulation of the electric industry in Illinois. Press Release, Ill. Commerce Comm’n, *ICC to Host Workshops on Future of*

² Because motions in limine “are designed to obtain rulings on *evidentiary* matters outside the presence of the jury” (*id.*), Illinois courts have held that motions in limine are unnecessary in a bench trial because “a trial judge is presumed to ignore any improper evidence” (*People v. Daniels*, 164 Ill. App. 3d 1055, 1084 (2d Dist. 1987)).

Deregulated Electricity Markets (Feb. 4, 2004), attached hereto as Ex. 1. The Commission further requested that, following the workshop process, each Working Group submit a final report during the fall of 2004 (Press Release, Ill. Commerce Comm'n, *ICC Begins Process to Deregulate State's Energy Market* (Feb. 26, 2004), attached hereto as Ex. 2). Specifically, the five working groups (Procurement, Rates, Competitive Issues, Utility Service Obligations, and Energy Assistance) were tasked with "achiev[ing] consensus on as many substantive issues as possible. Substantive agreements must be by consensus, not weight of opinion. Where consensus is not possible on a result, the group should nonetheless reach consensus on a precise definition of the remaining issue and a list of the possible resolutions (without attribution)." *Post 2006 Initiative Workshop Process – "Rules of the Road,"* at 2 (Mar. 31, 2004), attached hereto as Ex. 3.

As promised, in October 2004 each Working Group publicly presented its findings, and each report was then made publicly available on the Commission's website. *See* Press Release, Ill. Commerce Comm'n, *ICC to Hear Recommendations Regarding Deregulation in Illinois* (Oct. 12, 2004), attached hereto as Ex. 4; Press Release, Ill. Commerce Comm'n, *Stakeholders to Provide ICC Policymaking Guidelines for Future Illinois Electricity Restructuring* (Oct. 14, 2004), attached hereto as Ex. 5. It is these publicly available consensus reports and all references to the workshop process, along with other publicly available Post 2006 Initiative reports authored by Staff, the Commission, the Implementation Working Group, and the Office of the General Counsel, that the Movants now seek to exclude from the present proceeding. Movants base their motion on a few statements – inaccurately described and pulled out of context – which are addressed below. The fact is, these reports were, from the outset,

intended to be public documents that would assist future decision-makers as they addressed the complicated issues facing the Illinois electricity market in 2007.

A. The Post 2006 Initiative Preamble Does Not Support the Movants' Motion to Exclude All References to the Workshops and Subsequent Consensus Reports.

Traditional Commission policy dictates that while non-consensus items are afforded a level of protection similar to that in “settlement negotiations,” the consensus items resulting from a workshop process are in fact publicly available information and wholly appropriate to reference in future proceedings. *See* discussion *infra* at 4-5. The Workshop Preamble, upon which the Movants rest much of their argument, is consistent with the Commission’s policy:

In order to facilitate free and open discussions the stakeholders wish to assure that *statements made, positions taken, and documents and papers provided* by the stakeholders *in the Post 2006 Initiative Process* will not be used by the stakeholders in any subsequent litigation, including administrative proceedings before the Illinois Commerce Commission, the Federal Energy Regulatory Commission, and other federal, state, or local governmental authorities.

(Attachment C to Mot. (emphasis added)). Thus, while the Preamble protects those *statements made and documents provided by stakeholders during the actual meetings*, the Preamble does not shield from public disclosure those consensus items agreed upon by the parties, reflected in the official reports, and published in publicly available reports *after the workshop process concluded*. Nor are consensus items and reports of the Staff, Office of the General Counsel and Commission the “statements” or “positions” of “stakeholders.” Not once has ComEd sought to introduce into evidence the individual “statements made, positions taken, and documents and papers provided by” any of the Movants – or indeed by any stakeholder. To do so would be

unfair. But, to place the consensus items under lock and key would surely work an absurd result, rendering the parties' efforts and the consensus achieved meaningless.

That the protection afforded to the stakeholders in the Preamble was limited to non-consensus items and the deliberative comments of the parties made during the meetings which were never made public is reflected in numerous contemporaneous Post 2006 Initiative materials, including agendas, meeting minutes and the final reports. For example, the transmittal letter accompanying the publicly filed report of the Procurement Working Group specifically states that “[a]t the first meeting participants were informed by Commissioner Erin O’Connell-Diaz of the applicability of the *Illinois Commerce Commission’s traditional policy barring the subsequent use of non consensus ‘positions taken, and documents and papers provided by the stakeholders in the Post 2006 initiative process in any subsequent litigation....’*” Transmittal Letter to *Final Report to the Illinois Commerce Commission Presented by the Procurement Working Group* (Sept. 23, 2004) (emphasis added), attached hereto as Ex. 6. *See also Final Report, Rates Working Group*, at 9 (same), attached hereto as Ex. 7. Likewise, the agendas for the individual groups’ meetings also reflect this principle: “Consensus principles – applicability of traditional settlement discussion rule to *non-consensus items and ‘brainstorming’ of issues and alternatives.*” Agenda, Rates Working Group (May 4, 2004) (emphasis added), attached hereto as Ex. 8.³ Not surprisingly, the Movants have simply omitted these statements from their Motion.

The Movants were quite familiar with this traditional policy to exclude only non-consensus items. Indeed, in Docket No. 00-0596, the AG made a similar argument to that made in the Motion, and lost. There the AG argued that testimony concerning whether something was

³ These contemporaneous documents also make it clear that the working group meetings were part of a public Commission-sponsored workshop process, not a private party-run settlement process. *See*

or was not identified by Staff as a consensus item during the workshop process should be stricken. Judge Wallace ultimately allowed most of the testimony into the record, noting that consensus items are not afforded the “settlement negotiations” protection that non-consensus items receive:

On the whole, *when someone refers to that a consensus was reached, I think that that is an allowable statement to make because the purposes of the workshops are to go and to reach consensus....* But it's always been my understanding that the consensus that's reached in a workshop is the consensus of the parties that attend that workshop.

Transcript, Docket No. 00-0596, at 232 (Jan. 16, 2002) (emphasis added), attached hereto as Ex.

10. Judge Wallace further explained that “workshops are also the place and the tool to reach consensus, and a consensus, as I define it, is that the group that is in the room that day agrees with that position, and then in this particular instance Staff is suppose[d] to take that down that that was a consensus. Otherwise, *why would you continue to go through workshop processes except for the sole purposes of identifying issues that you're going to litigate later....*” *Id.* at 229 (emphasis added).

Here, the case for including the consensus items is even more straightforward: there is no dispute concerning the identity of the consensus items; in fact, the Procurement Working Group was *unanimous* in its findings. *Final Report of the Illinois Commerce Commission's Post-2006 Initiative to Governor Rod. R. Blagojevich & the Illinois General Assembly*, at 7 (Dec. 8, 2004), attached hereto as Ex. 11. The Preamble simply affords no support to Movants' argument.

B. The Unsigned Draft Confidentiality Agreement Does Not Support the Movants' Argument.

Minutes, Procurement Working Group (May 14, 2004), attached hereto as Ex. 9.

Attempting to bolster its unsupported “Preamble” argument, the Movants also rely on an unsigned draft Confidentiality Agreement (“Agreement”) that was posted among the many comments, agendas, meetings minutes and reports on the Post 2006 website. This agreement was never used during the workshop process: “While the parties were unable to agree upon the use of a Confidentiality Agreement[,] [t]he subgroup, led by ICC General Counsel Casey, has prepared a Confidentiality Agreement in the event that one is deemed necessary in the process.” Minutes, Competitive Issues Working Group (May 12, 2004), attached hereto as Ex. 12. *See also* Ex. 9 (reporting that “the confidentiality agreement had been vetted through all the legal teams but was not yet agreed and will not be signed and executed by participants unless it is needed”).

Ignoring this reality, the Movants have constructed the fiction that this draft Agreement is actually the Commission’s “public promise that the workshops would be conducted in a manner most likely to result in ‘free and open’ discussions, without prejudice to any party’s participation....” (Mot. at 6-7, fn. 4). And further, Movants’ argue that the “Confidentiality Agreement also confirmed that discussions and information from the workshops would not be used in subsequent litigation.” (Mot. at 17, fn. 6). The unsigned draft agreement, however, is neither a public promise nor does it provide the protections claimed by Movants. If, as the Movants allege, the agreement applied to the Post 2006 consensus and related reports, then, pursuant to the terms of the agreement, “[n]o later than thirty (30) business days after conclusion of the Working Group, each Party...will (i) destroy all such Confidential Information and certify such destruction to the other Parties, or (ii) return all copies of Confidential Information that it holds or that were furnished by any other Party providing Confidential Information.” (Attachment D to Mot., at 4, ¶ 5). This obviously did not occur with the

consensus and Commission reports. Further, the Agreement specifies that “‘Confidential Information’ does not include information that (i) is or becomes generally available to the public other than as a result of an unauthorized disclosure by a Party or its Representatives.” (*Id.* at 2, ¶ 1(a) (emphasis added)). Obviously the reports were made generally available to the public, and, to ComEd’s knowledge, neither Movants nor any other stakeholder argued that this disclosure was unauthorized. Simply put, the unsigned confidentiality agreement was ignored by the parties to the Post 2006 process and it should be ignored here as well.

C. Denial of Movants’ Motion Is Consistent with the Failure of Movants or Any Other Stakeholder to Object to the Public Availability of the Reports.

Consistent with established Commission policy, each Working Group prepared a final report and submitted it to the Commission without any mention that the report itself was confidential or otherwise inadmissible in subsequent litigation. This omission is significant given the fact that a disclaimer for non-consensus items was announced at the meetings. *See* discussion *supra* at 4-5. The Commission, in turn, established an Implementation Working Group, which issued its own report, and the Commission’s Office of General Counsel also provided comments on each Working Group’s report. These reports and comments, which are publicly available on the Commission’s website, also lack any disclaimers or confidentiality designations. And finally, the Commission provided its own report to the Governor and General Assembly, submitting each Working Group report along with its report.

In fact, the Movants themselves have referenced and relied upon the working groups’ reports *in this docket* in their own testimony and during the motion to dismiss briefing and hearing. *See, e.g.*, Direct Testimony of W. Steinhurst, Dkt. No. 05-0159, at 5-6, 8-9 (CUB-CCSAO Ex. 2.0, June 8, 2005) (referring to and quoting from the workshop meetings and

reports), attached hereto as Ex. 13; Rebuttal Testimony of W. Steinhurst, Dkt. No. 05-0159, at 5-7 & fn 1, 35-43 (CUB-CCSAO Ex. 4.0, Aug. 3, 2005) (comparing witness's proposed alternative to the Procurement Working Group's consensus criteria), attached hereto as Ex. 14; Transcript, Dkt. No. 05-0159, at 32-35 (July 5, 2005), attached hereto as Ex. 15. The present Motion is therefore not only contrary to traditional Commission policy, it is contradicted by the Movants' past actions and is clearly without merit.

D. Denial of Movants' Motion Is Consistent with the Workshop Process.

Consistent with its broad authority and expertise (*see* discussion *infra* at 9), the Commission has initiated workshop processes in the past to address a variety of unique issues confronting the particular industries and stakeholders within its purview. *See id.* at 9-12. *See, e.g., Rulemaking to Implement Recommendation 1*, Order, Dkt. Nos. 92-0193 & 92-0389 (Cons.), LEXSEE 1995 Ill. PUC LEXIS 889, at *5 (Ill. Commerce Comm'n Dec. 20, 1995) (referencing the least cost planning workshops). The Post 2006 Initiative workshop process was certainly nothing new to stakeholders or the Movants in particular, and, as shown above, the policies on the admissibility of consensus vs. non-consensus items were well established. The Post 2006 workshops were designed to anticipate and address those issues facing the Illinois electricity market beginning in 2007: "this Commission in early 2004 announced a plan to host a series of meetings and workshops to examine the future of the electric market in Illinois, public policy issues surrounding restructuring of the electric industry, and critical questions concerning procurement of supply to serve customers in the post-2006 environment." Ex. 11 at 2. As the Office of General Counsel observed following its review of the resulting consensus reports, "[c]ollectively, [the working group reports] represent a body of information and analysis that will greatly assist those who must make the ultimate decisions concerning the future of the

electricity market in the State of Illinois.” Mem. from P. Casey to Ill. Commerce Comm’n Re: OGC Comment and Analysis on Working Group Implementation Reports (Nov. 23, 2004) (emphasis added), attached hereto as Ex. 16. As the Office of General Counsel confirmed, the reports were intended to help decision-makers. Because the Motion will deny that assistance, it should be rejected.

II. The Movants’ Motion Is Based on an Unduly Narrow View of the Commission’s Authority and Role, and if Granted, Would Defeat the Purpose of the Commission-Initiated and Directed Workshop Process.

The Movants argue both (i) that “the Commission...[is] estopped from using the result of [the Post 2006 Initiative process] in this docket” (Mot. at 9) and (ii) that referring to that process is somehow inconsistent with the rule that decisions must be based “exclusively on the record” (Mot. at 16). These arguments fail to take into account that the Commission is a uniquely active and even proactive body. According to the Illinois Supreme Court, “[t]he commission is not just an umpire. It has been given active functions of policy making and supervision. It may initiate hearings on its own motion, and it has a wide discretion in shaping proceedings brought by others.” *Antioch Milling Co. v. Pub. Serv. Co. of N. Ill.*, 4 Ill. 2d 200, 210 (1954). Moreover, the Commission’s decisions as to which processes to use are entitled to great deference. *See, e.g., Institute of Shortening & Edible Oils, Inc. v. Ill. Commerce Comm’n et al.*, 45 Ill. App. 3d 98, 103-04 (4th Dist. 1977) (affirming the Commission’s “wide discretion” to set in motion certain procedures and its “policy making prerogative”). The 1997 Restructuring Act also recognized the Commission’s unique role: “The Illinois Commerce Commission should act to promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all consumers.” 220 ILCS 5/16-101A(d).

Consistent with its policymaking authority, the Commission has used the workshop process to define issues and establish consensus when possible. As Judge Wallace summarized in Docket No. 00-0596:

[T]he Commission is very committed to the workshop process. We've used it extensively the last two years in both the telecom and the public utilities side. Both sides of the Commission, or those two sides, utilities and telecom, have vast experience with workshops. For the most part everyone agrees that they are useful and valuable. Hopefully they cut down on some litigation. I think that the ground rules that everyone has sort of morphed into the workshop process is that obviously parties' positions, the parties are free to say whatever they want in a workshop without fear of that position coming back to haunt them.

Ex. 10 at 228-29.

Like the Commission, many stakeholders value the workshop process and, in the case of the Procurement Initiative, invested an extraordinary amount of time and resources into the process, meeting on roughly 14 separate occasions for a total of more than 52 hours. Ex. 6. By all accounts, and they are numerous, the participants' efforts were rewarded and the workshops were a success, with the parties reaching consensus on many issues and establishing a framework that the Legislature and Commission could utilize in addressing post-2006 issues:

The undertaking was well worth the time and effort it required. Much has been achieved in a relatively short time. Significant issues that in other jurisdictions might have been aired in contentious litigation settings have been explored extensively in a well organized, efficient and respectful manner by parties who, despite some differing interests, ***all acted in good faith to arrive at a framework for emerging from the transition period established under the 1997 Restructuring Act.*** Ex. 11 at 2 (emphasis added).

[T]he stakeholders have ultimately arrived at policy conclusions in the form of consensus recommendations. There is a consistency and symmetry in the consensus of opinions of each of the working groups which in many areas aligns with that of the Commission's Staff. ***Stakeholders and Staff have provided clear and consistent***

direction to the policy-makers in the State. Id. at 3 (emphasis added).

The [Procurement Working Group] agreed that any procurement process adopted through legislative fiat or by Commission rule should include, to the extent possible, the attributes enumerated in [the Procurement Working Group Report]. This effort was designed to provide guidance to either the Legislature or the Commission as they approach their respective responsibilities for the “post” transition period. This document was the group’s effort to provide as much guidance as possible without giving specific preference to any procurement process. Ex. 6 at 2 (emphasis added).

This report of the activities of the Procurement Working Group provides a “good faith consensus” road map for policy makers to consider when making the final decisions on energy procurement policy in the Post 2006 era. Id. (emphasis added).

Contrary to the Movants’ claim that allowing the consensus reports and references to the workshop process into the record would result in a “fail[ure] to protect and preserve the integrity of the workshop process” (Mot. at 3), the reports themselves make abundantly clear the stakeholders’ intentions that these reports be considered by the decision-makers. It is well within the Commission’s authority to take into consideration the Post 2006 reports, particularly when they are part of the record. It would certainly be an unprecedented waste of time, money and other resources to ignore the working groups’ consensus findings and observations, contrary to the stakeholder intent. The Movants thus have it backward: *exclusion* of the Post 2006 consensus reports and any reference to the fact the workshops occurred will have a chilling effect such that “stakeholders will be reluctant to participate in future Commission sponsored workshops....” (Mot. at 3).⁴

⁴ ComEd further notes that it has never sought to hold any of the Movants to a position or argue that they are bound by the reports in some way. Indeed, the consensus items identified in the Procurement Working Group report only set forth the desirable attributes or features of a procurement process and did not recommend adoption of a specific procurement method. That said, to the extent Movants argue that the reports are settlement agreements (which they are not), ComEd notes that such agreements are

While the Commission is bound by the record in a proceeding, nothing prohibits it from taking into account the larger factual context of the proceeding – particularly when that context is supported by numerous witnesses and exhibits. As Judge Wallace explained in rejecting the AG’s similar efforts to exclude workshop-related references in Docket No. 00-0596, referring to workshops “doesn’t violate any workshop process, but *we can’t operate in a vacuum*. We have to acknowledge that we had seven or eight workshops, and acknowledging that they actually went on is okay...” Ex. 10 at 219 (emphasis added). Here, for example, the references to the workshops and subsequent consensus reports show that ComEd’s Rider CPP filing is simply the next step in the evolution of the Post 2006 process, and that a filing related to procurement was fully anticipated by the Procurement Working Group.⁵ The Commission should not allow its fundamental policymaking role, and its authority to consider the context in which issues arise, to be limited or impaired by the Movants’ litigation tactics.

III. The AG’s Attempt to Exclude Relevant and Material Evidence Is Contrary to Applicable Law, and, if Granted, Would Unfairly Truncate and Misrepresent the Record; Denial of the Motion Is Not Unfair to the Movants.

The Movants are quick to cite the “Commission’s rules requir[ing] that persons appearing in its proceedings be treated fairly, and that ‘[t]o this end, parties which do not act diligently and in good faith shall be treated in such a manner as to negate any disadvantage or

generally legally enforceable and admissible in court. *See, e.g., Collins v. Educ. Therapy Ctr.*, 184 F.3d 617, 620 (7th Cir. 1999). Thus, the Movants’ efforts to now distance themselves from the consensus reports speaks volumes, raises questions of credibility, and further bolsters ComEd’s position that these consensus reports are in fact relevant and material.

⁵ Likewise, Chairman Hurley, during the hearing of the AG’s (et al.’s) motion to dismiss the present proceeding, referenced the “process here at the Commission, which we call the post-2006 process.” Ex. 15 at 32. The Chairman then requested that each presenter address “whether this issue was raised in that process, and how – what the outcome of the issue was in that process.” *Id.* at 32-33 (Chairman Hurley). Neither the AG nor any other presenter objected to the Chairman’s reference to the process, and each party, including the AG, answered the Chairman’s question.

prejudice experienced by other parties.” (Mot. at 2). The same standard, however, applies to the Movants. Although the testimony and exhibits that the Movants seek to exclude were filed over six months ago, the Movants, without explanation, waited until after all the testimony had been filed and less than a week before hearings are to start to serve their Motion. If the Movants truly believe that “ComEd disregard[ed] the ground rules of the Post 2006 Initiative” when it filed its direct testimony in February of this year (Mot. at 3), they would have filed their motion soon thereafter to prevent further use of the consensus reports in subsequent rebuttal and surrebuttal testimony and reliance on those reports by parties who chose not to file. Equity and fairness considerations alone require that the Movants’ Motion be dismissed, and it is well within the Commission’s discretion to do so. *See* Ill. Admin. Code tit. 83, § 200.25(b); discussion *supra* at 2.

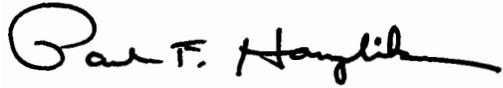
Another goal of the Commission in ruling on motions that is ignored by Movants is preserving the “[i]ntegrity of the fact-finding process”: “[t]he principal goal of the hearing process is to assemble a complete factual record to serve as basis for a correct and legally sustainable decision.” Ill. Admin. Code tit. 83, § 200.25(a). The Movants’ Motion seeks to impede the Commission’s effort in this regard. Movants request that all references to the Post 2006 workshop process and the publicly available consensus (and other) reports distributed thereafter be excluded, resulting in a record that provides no context for ComEd’ Rider CPP filing. The Motion would thus exclude admissible and highly relevant evidence.

This is clearly convenient for the Movants, as a record void of any context could potentially lend credence to arguments (which ComEd believes to be baseless) made by witnesses for Movants to the effect that ComEd did not adequately consider or analyze alternatives. *See, e.g.*, Ex. 13 at 3, 5-9; Ex. 14 at 6, 13, 33-35. Such witnesses have also claimed

that if the Commission fails to order additional proceedings it will be acting “blithely” (in an implied disregard of its responsibilities) if it approves the auction, and without a sufficient foundation for review. *See, e.g.*, Ex. 14 at 10. *See also Jeanguenat*, 78 Ill. App. 3d at 953. Exclusion of the testimony related to the Post 2006 Initiative is not only misleading and unfair to ComEd and the many other parties that support the auction, it is clearly to the detriment of the Commission in establishing a “complete factual” – and legally sustainable – record.

Movants in contrast would not be prejudiced by denial of the Motion. As shown above, the Commission has not broken any promises to the Movants or anyone else. The Movants are and were well aware of the traditional Commission policy to admit consensus items in related proceedings and afford “settlement negotiations” protection only to non-consensus items. Movants participated in the working group process and never objected to the public dissemination of the reports previously. And in this proceeding, they have a right to state their current position and full rights to cross-examine those who continue to abide by the consensus reports.

Respectfully submitted,
COMMONWEALTH EDISON COMPANY

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Exhibit 1

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News **from the Illinois Commerce Commission**

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FOR IMMEDIATE RELEASE

February 4, 2004

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ICC to host workshops on future of deregulated electricity markets

The Illinois Commerce Commission today announced that it is planning a series of meetings and workshops to examine the future of the state's electric market and identify public policy issues surrounding deregulation of the electric industry in Illinois.

"This is the most crucial issue the ICC is likely to address in the next few years, and we have to resolve it in a way that serves the interests of consumers and promotes viability of the electric markets," said ICC Commissioner Erin O'Connell-Diaz.

O'Connell-Diaz has been asked by ICC Chairman Edward Hurley to lead the Commission's Post 2006 Initiative. The state's legislatively mandated transition period from a fully regulated electric market to a largely deregulated electric market concludes at the end of the year 2006.

O'Connell-Diaz intends to call a meeting of interested stakeholders--including electric utilities, consumer advocates, independent power producers, energy marketers and others--to identify all the issues that require resolution.

O'Connell-Diaz, a 13-year veteran of the ICC who was appointed by Gov. Blagojevich to serve on the Commission in April 2003, indicated the meetings will be used to develop a schedule of workshops designed to explore solutions to market structure challenges, and determine what regulatory or legislative changes may be needed to address the new marketplace in Illinois.

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Exhibit 2

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February 26, 2004

ICC begins process to deregulate state's energy market

The Illinois Commerce Commission is seeking input from all current and potential energy stakeholders as the state moves toward a deregulated electricity environment in 2007.

At the initial "Post-2006 Initiative" meeting today in Chicago, the ICC outlined its goals and expectations for the transition and announced the schedule for future symposiums, meetings and workshops designed to identify issues surrounding the change in the state's energy industry. Attendees included electric utilities, consumer advocates, independent power producers, energy marketers and others.

Commissioner O'Connell-Diaz is spearheading the ICC's efforts.

"We are absolutely committed to providing a forum and process for an open exchange of ideas, positions and hopefully solutions to implementation of the Customer Choice legislation of 1997," said Commissioner Erin O'Connell-Diaz. "Restructuring Illinois' energy market marks the single biggest milestone in the history of our state's utility landscape and promises to be the biggest regulatory challenge facing this Commission in the next few years."

The Commission's Bureau of Public Utilities has published a "white paper" that identifies preliminary issues and will serve as the blueprint for the group's initial effort. Both this document and related information are available on the ICC's website, www.icc.state.il.us.

The ICC also announced it will host a symposium in conjunction with the Illinois Energy Association and the Citizens Utility Board on April 29 at Loyola University-Water Tower Campus in Chicago. This symposium will feature prominent, national speakers and panel members to help facilitate and explore solutions to market structure challenges.

Workshops and other meetings will be held throughout the summer months, with a final report expected sometime this fall.

"Other states are closely watching Illinois to see what happens. We want to be a leader, but most importantly, we want to get it right for Illinois," O'Connell-Diaz added.

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Exhibit 3

**Response Of Commonwealth Edison Company To Motion In Limine To Exclude
Testimony Filed By The People Of The State Of Illinois And The Cook County State's
Attorney's Office, Citizens Utility Board And Environmental Law And Policy Center.**

Post 2006 Initiative Workshop Process- “Rules of the Road”

- The issues included in the Final Issues List will be divided between 5 working groups (e.g., Procurement, Rates, Competitive Issues, Utility Service Obligations, and Energy Assistance) .
 - Participation in each working group is open to all. However, the working groups are **working** groups and all participants will be expected to actively contribute to the discussion and resolution of issues. No matter how many individuals from a stakeholder wish to participate, each stakeholder should designate one "lead" per working group who should be authorized to receive materials related to that group.
 - Each working group will have a convener/reporter. This convener/reporter is not a “chair” – it is not their job to enforce “rules of order” or to limit discussion. Nor will they have any special power over the resolution of issues. It will also be a real working position, requiring significant and dedicated effort. The convener/reporter will be expected to schedule and secure locations for group meetings, issue agendas listing which particular issues are to be taken up at each meeting, circulate minutes of the meetings reflecting any agreements reached for approval by the group, and report bi-weekly on the progress of the group and any approved items of consensus. The convener/reporter will also prepare monthly reports and a final report. Guidelines for the reports will be handed out at the first workshop. Working group conveners/reporters are encouraged to coordinate to avoid any schedule overlap. Each group will be given a preferred day of the week to schedule workshops. You can schedule a meeting on a day other than your preferred day, but you must coordinate with the other conveners.
- * Each working group will have a convener/reporter selected from those persons who submit a letter of interest by April 15, 2004. Letters of Interest should be sent to sgutilla@icc.state.il.us. Each Letter of Interest should include working group, name, address, phone, fax, and e-mail address.
- The first workshop date is listed below. All initial workshops will take place at the Illinois Commerce Commission in the Main Hearing Room. All other schedules will be set by the convener.

Monday: Procurement (May 10, 2004 at 10:00 a.m.)

Tuesday: Rates (May 4, 2004 at 10:00 a.m.)

Wednesday: Competitive Issues (May 12, 2004 at 10:00 a.m.)

Thursday: Utility Service Obligations (May 13, 2004 at 10:00 a.m.)

Friday: Energy Assistance (May 14, 2004 at 10:00 a.m.)

- In addition to the convener/reporter each group will be assigned a Commission Staff person. The Staff member will work closely the convener/reporter.
- Positions and questions on issues to be discussed should be considered prior to each working group meeting. You do not need to submit any additional written materials before the workshops. Participants should be ready to work. Only persons with knowledge and authority should attend.
- The April 22 written comments may, but need not, propose responses to some or all of the specific issues on the final issues list. However, the workshops are intended to be opportunities to learn and engage in productive compromise. No single participant will have all the answers going in.
- The goal of each working group is to achieve consensus on as many substantive issues as possible. Substantive agreements must be by consensus, not weight of opinion. Where consensus is not possible on a result, the group should nonetheless reach consensus on a precise definition of the remaining issue and a list of the possible resolutions (without attribution).
- A final report from each group will be due September. Meetings should be held as often as required to complete the task. In most cases, we expect meetings will occur weekly. Meetings should be held in both the Chicago area and central/southern Illinois (e.g., Springfield, Decatur, Peoria).
- As we go through this process issues will come to light relative to the need for action by either the Legislature and/or State Agencies. In that event, a Governmental Working Group will be formed to assist in the implementation of the working groups' work product.
- Many of the questions we will be discussing simply cannot productively be examined without a frank discussion of confidential information critical to stakeholders' businesses and interests. Therefore, confidentiality of legitimately proprietary information must be protected within the open process. A group of stakeholder attorneys will work with the Commission's General Counsel to identify a workable confidentiality agreement. Having such an agreement available will permit stakeholders to circulate proprietary information among signatories with the protections afforded to such information under the Public Utilities Act preserved. Therefore, no conference call-in will be allowed for the workshops.

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Exhibit 4

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News

from the Illinois Commerce Commission

Voice: Springfield. 217.782.5793 Chicago. 312.814.2850 FAX 217.524.0674 BBS 217.782.9233 <http://www.state.il.us>

FOR IMMEDIATE RELEASE
October 12, 2004

Contact: Brian Sterling
312-814-6653

ICC to hear recommendations regarding deregulation in Illinois

The Illinois Commerce Commission's Electric Policy Committee will meet at 10 a.m. Friday, Oct. 15 in Chicago to hear the following presentations from the Post 2006 Initiative workshops:

<u>Working Group</u>	<u>Presenter</u>	<u>Title/Affiliation</u>
Procurement	Dave Vite	President/CEO, IL Retail Merchants Assoc.
Rates	Glenn Rippie	Partner, Foley & Lardner LLP
Competition	Phil O'Connor	President, NewEnergy Midwest
Utility Service Obligations	Katie Papadimitriou	Reg. Affairs Manager, NewEnergy Midwest
Energy Assistance	Jon Carls	Director, Regulatory Service Ameren

Launched in February, the ICC's Post 2006 Initiative is a focused effort involving interested stakeholders—including electric utilities, consumer advocates, independent power producers, energy marketers and others—in a series of meetings and workshops to examine the future of the state's electric market and identify public policy issues surrounding deregulation of the electric industry in Illinois.

The Post 2006 Initiative is designed to explore solutions to market structure challenges, and determine what regulatory or legislative changes may be needed to address the new marketplace in Illinois.

The meeting will be held in the ICC's main hearing room, on the eighth floor of the State of Illinois Building, 160 N. LaSalle Street, Chicago.

All Post 2006 reports will be released following the meeting and will be available on the ICC website at www.icc.state.il.us.

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527 East Capitol Avenue, Springfield, IL 62701

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Exhibit 5

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FOR IMMEDIATE RELEASE

Oct. 14, 2004

Stakeholders to provide ICC policymaking guidelines for future Illinois electricity restructuring

CHICAGO – The Illinois Commerce Commission today will be receiving reports containing a comprehensive set of guidelines to consider as the regulatory body ponders what the future of electricity competition will look like in the state.

The recommendations followed an unprecedented effort launched by the ICC last February to engage all stakeholders in a discussion of the issues facing Illinois' electric industry. The transition period mandated by the Illinois Electric Service Customer Choice and Rate Relief Law of 1997 comes to an end in 2006.

The law provided a gradual transition to customer choice starting with large customers in 1999 and phasing in business and residential customers. Residential customers in Illinois received rate decreases and utilities began a ten-year rate freeze that expires in December 2006.

What happens after 2006 is the focus of the ICC's Post 2006 Initiative. Earlier this year, Chairman Edward Hurley asked Commissioner Erin O'Connell-Diaz to lead this effort.

"We have been working hard all summer to examine the issues from all angles," O'Connell-Diaz said. "Restructuring is no easy task. We want to make sure we address potential problem areas as we move forward toward a more permanent competitive model that benefits all customer groups."

The ICC has provided a forum for all issues to be thoroughly debated and discussed. Commissioner Kevin Wright has been managing the Post 2006 wholesale electricity issues and Commissioner Lula Ford has been overseeing energy assistance and low-income issues.

Utilities, consumer advocates, independent power producers and energy marketers are among the stakeholders who participated in five working groups that submitted presentations. All key stakeholder interests were represented. The reports are available at the ICC and on the Internet at www.icc.state.il.us.

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Exhibit 6

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POST 2006 INITIATIVE

FINAL REPORT TO THE
ILLINOIS COMMERCE COMMISSION
PRESENTED BY THE
PROCUREMENT WORKING GROUP

CONVENER: DAVID F. VITE

TABLE OF CONTENTS

1. Letter of Transmittal
2. Consensus of Procurement Attributes
3. Scenarios 1 through 12
 - A. Vertical Auction
 1. Scenario 1 description
 2. Consensus Pros & Cons
 - B. Full Requirements RFP Process Summary
 1. Scenario 2 description
 2. Consensus Pros & Cons
 - C. Horizontal Products
 1. Scenario 3 description
 2. Consensus Pros & Cons
 - D. Smart Portfolio Management Process Summary
 1. Scenario 3a description
 2. Consensus Pros & Cons
 - E. Affiliate Purchases
 1. Scenario 4 description
 2. Consensus Pros & Cons
 - F. Market Value Index (MVI)
 1. Scenario 5 description
 2. Consensus Pros & Cons
 - G. Market Assessment and Supply Procurement Review
 1. Scenario 6 description
 2. Consensus Pros & Cons
 - H. Rate Freeze/Transition Period Extension
 1. Scenario 7 description
 2. Consensus Pros & Cons
 - I. Transition period expires; Regulation continues under exiting post-2006 law
 1. Scenario 8 description
 2. Consensus Pros & Cons
 - J. Vertically Integrated Utility Supply

1. Scenario 9 description
2. Consensus Pros & Cons

K. Re-regulation of Electricity Production

1. Scenario 10 description
2. Consensus Pros & Cons

L. Market-Responsive Pricing Model

1. Scenario 11 description
2. Consensus Pros & Cons

APPENDIX

1. Participants List
2. Listing of Presentations and Presenters
3. List of Meetings
4. Agendas
5. Minutes of Meetings
6. Presentations

LETTER OF TRANSMITTAL
PROCUREMENT WORKING GROUP

Dear Commissioners:

The Procurement Working Group (PWG) began its monumental task of vetting various scenarios for Power Procurement in the Post 2006 era on May 4, 2004. This process was accomplished only through the cooperative and dedicated efforts of all of the “stakeholders” involved in our arduous process. The Working Group met 14 times for a total of more than 52 hours in the discussions of the various strategies for procuring power following the current transition.

At the first meeting participants were informed by Commissioner Erin O’Connell-Diaz of the applicability of the Illinois Commerce Commission’s traditional policy barring the subsequent use of non consensus “positions taken, and documents and papers provided by the stakeholders in the Post 2006 initiative process in any subsequent litigation, including administrative proceedings before the Illinois Commerce Commission, the Federal Regulatory Commission and other federal, state or local government authorities.” In addition, the group was reminded of the importance of the strict compliance with all anti-trust laws and was referred to the Anti-trust Guidelines for the Post 2006 Initiative prepared under the supervision of the ICC General Counsel.

It was agreed by the PWG that our process would include “factual” presentations of each scenario developed in the initial Post 2006 Initiative discussions followed by a plenary discussion to develop a thorough understanding of each scenario. Following discussion participants were encouraged to file comments regarding the “Pros and Cons” of each specific scenario. All comments were forwarded to participants prior to a final discussion on consensus items describing the “pros and cons” of the scenario.

The group was then provided a draft of each “pro and con” consensus list at a subsequent meeting. These “consensus” items were either agreed or modified and a final list of consensus “pros and cons” was adopted for each scenario. This process was completed for 12 of the 13 scenarios which were presented. By consensus, it was agreed that, Scenario 12 which envisioned adoption of a renewable portfolio standard or target would not conclude with a “pros and cons” consensus position. In lieu of a consensus position each of the other 12 scenarios includes a reference as to whether or not a renewable portfolio standard or target would be allowed or accommodated under each scenario.

Subsequent to the groups' completion of the "pros and cons" consensus documents for all assigned scenarios it considered, modified and adopted a document called "Procurement Consensus Attributes". The group agreed that any procurement process adopted through legislative fiat or by Commission rule should include, to the extent possible, the attributes enumerated in that document. This effort was designed to provide guidance to either the Legislature or the Commission as they approach their respective responsibilities for the "post" transition period. This document was the group's effort to provide as much guidance as possible without giving specific preference to any procurement process. The group agreed, given the wide range of opinions among the "stakeholders", that it would be next to impossible to recommend either a specific scenario or to rank scenarios in order of preference.

This report of the activities of the Procurement Working Group provides a "good faith consensus" road map for policy makers to consider when making the final decisions on energy procurement policy in the Post 2006 era. Given the broad diversity of opinions of the "stakeholders" involved in the discussions this report is the most thorough response possible to the challenges presented by the Commission to the Procurement Working Group. The Procurement Working Group did everything possible to create consensus, to blend the needs of the wide range of "stakeholders" and to insure that consumers of all sectors will benefit in the Post 2006 era. Every participant worked to achieve a "good faith" compromise on issues which have significant impact on each and every type of "stakeholder". The group attempted to precisely define, discuss and agree in as many areas as possible. This report provides the most definitive presentation of Procurement strategies and represents the most comprehensive compilation of consensus positions.

The reports that follow begin with the "Consensus for Procurement Attributes" followed by a short description of each Scenario and its' consensus "pro and con" document. The Appendix provides a copy of the "presentations" made for each Scenario. It also includes a participant list, meeting agendas and minutes.

On a personal note, please accept my thanks for allowing me to convene the PWG. It was an honor to work with such a distinguished and learned group of participants. While our work was sometime tedious, all in the group worked arduously to complete our task in a cooperative spirit. Everyone toiled to understand the issues and to be mindful of the needs and positions of this diverse universe of "stakeholders". Without that effort and a positive view of the future, this report would not have provided this volume of "consensus" positions.

David F. Vite
Convener/Recorder
September 23, 2004

STATE OF ILLINOIS
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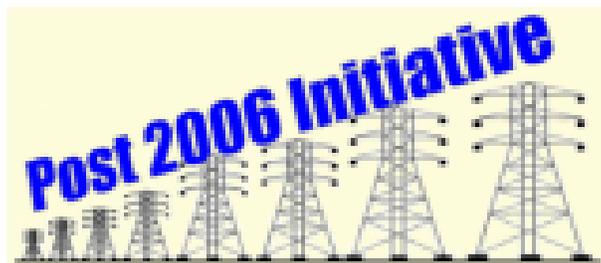
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Exhibit 7

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Illinois Commerce Commission

Post-2006 Initiative



FINAL REPORT
RATES WORKING GROUP

IV. Workshop Process

A. Description of the Group's Approach

Like its sister Groups, the RWG operated on a principal of consensus. Where consensus could be achieved on an issue, the Convenor reflected that consensus on a Progress Report sent to the Commission. Each such report was submitted to the Group in draft form prior to being sent to the Commission and all participants were given an opportunity to comment. Thus, while there was not substantive unanimity or even consensus on every issue, there was a unanimous consensus that each final Progress Report fairly reflected the consensus resolution reached at the meeting and, where a consensus resolution was not possible, fairly reflect the positions of the parties and the concerns that they felt were most critical.

At each RWG meeting, participants were reminded of the applicability of the Illinois Commerce Commission's traditional policy barring the subsequent use of non-consensus "[p]ositions taken, and documents and papers provided by the stakeholders in the Post 2006 Initiative Process ... in any subsequent litigation, including administrative proceedings before the Illinois Commerce Commission, the Federal Energy Regulatory Commission, and other federal, state, or local governmental authorities." In addition, parties were reminded of the importance of strict compliance with all anti-trust laws and referred to the written Anti-Trust Guidelines for the Post 2006 Initiative prepared under the supervision of the ICC General Counsel, copies of which were available at the meeting.

To assist it in performing its work in an orderly manner, the RWG adopted several procedures:

- The RWG, in conjunction with the Procurement Working Group ("PWG") identified a set of twelve Procurement Scenarios that described, without prejudice and in broad form, different approaches that might govern the procurement of wholesale electricity by utilities on an individual or statewide basis. These Scenarios were used, where appropriate, to help analyze in an orderly manner RWG issues where the answer did or could change depending upon the method of procurement that was chosen.
- The RWG analyzed its Issues in topical groups or "Buckets." At its first plenary meeting, the RWG discussed ways of dividing the Issues assigned to it into Buckets that each contained topics with similar themes. A team of representatives was chosen to suggest a division, which was ultimately adopted by the RWG. This promoted coherent discussion of related issues and permitted parties with limited resources or interests to focus their participation. The seven Buckets were: (1) Unbundling; (2) Hedging of Electricity Procurement Costs; (3) Cost Recovery; (4) Competitive Interactions; (5) Demand Response, Efficiency, Renewables; (6) Other Rate Design Issues; and (7) Rate Setting Mechanisms. A list of the Issues assigned by the Commission to the RWG, showing the classification into each Bucket, is attached as Appendix IV-A.
- All RWG meetings were held in person, typically with a video link between Chicago and Springfield to permit live real-time participation in either city.

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Agenda
May 4, 2004

- I. Introduction
 - A. Welcome
 - B. Discussion of process
 - Open process / encouragement of free dialog
 - Consensus principles – applicability of traditional settlement discussion rule to non-consensus items and “brainstorming” of issues and alternatives
 - Anti-trust compliance
 - Confidentiality will be addressed when, and if, needed

- II. Review of Group Tasks
 - A. Provide a useful product to the Commissioners and other stakeholders on rate issues arising from the alternative post-transition scenarios
 - B. The Issues List sets out the scope of the issues we are to examine
 - C. Open questions
 - How to integrate with other groups
 - How to use the Issues List to meaningfully analyze alternatives
 - Need for additional background information or speakers (*e.g.*, how rates have been set in states operating under various scenarios)?

- III. Possible Strategic Approaches
 - A. Use of “Scenarios” as suggested by several parties
 - 1. Scenarios are broad policy directions under which Issues can be analyzed and consensus items synched-up between Groups
 - Scenarios are not exclusive – all views can be represented
 - Scenarios are not silos; blending is possible, but must be manageable in number
 - 2. Scenario candidates (with “tips of the hat” to many stakeholders)
 - Wholesale market acquisition through “full requirements” auctions
 - Wholesale market acquisition through “full requirements” RFPs
 - Market-based acquisition by horizontal tranche or wholesale market segment
 - Affiliate purchases (including possible affiliate use of market acquisition)
 - Cost-index (*e.g.*, MVI) based procurement regulation
 - Acquisition pursuant to an administrative Integrated Resource Planning process
 - Rate freeze / transition period extension (continuation of current regulation)
 - Re-regulation of electricity production
 - B. Other options?

IV. Next Steps

A. Meetings

- Set next WG meeting
- Frequency of meetings thereafter
- Locations

B. Need for speakers / presenters, perhaps in concert with other WGs

- Suggestions for other speaker / educational programs?
- Joint programs?

C. Communication

- Designated contacts for each stakeholder participant will facilitate communication
- ICC website
- Mailing list
- Agendas and minutes

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Exhibit 9

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MINUTES

May 14, 2004 Meeting of the Procurement Working Group

The meeting was called to order promptly at 1:00 p.m. The meeting agenda was introduced after introductions of all in attendance were made. Mr. Vite distributed an attendance sheet and asked everyone to complete the information so that a contact list could be created.

Mr. Vite provided an overview of the Work Group's proposed process and purpose. The issues of confidentiality and anti-trust compliance were raised. While the meetings are open to the public, nothing raised in the meetings would be admissible in any Commission proceedings. It is the hope of the group that the workshop efforts would result in a report to the Commission sometime in September. Mr. Vite indicated that the meetings will begin on time and end at the scheduled conclusion time.

At this point, Commissioner Erin O'Connell-Diaz entered the meeting and indicated that each week on Friday morning, there would be a conference call of the Conveners for the purpose of coordinating the interplay of the workshop groups on issues and schedules. She noted that the confidentiality agreement had been vetted through all the legal teams but was not yet agreed and will not be signed and executed by participants unless it is needed. She indicated further that all workshop groups would limit the use of conference calls because face to face is more productive. At this point in the meeting, she turned the meeting over to Mr. Vite for the remainder of the agenda.

The following schedule was presented and adopted.

Date	Time	Place	Topic	Presenter	Company
June 3, 2004	1 -4 pm	Chicago	Scenario 1 Scenario 2 Scenario 3	Michael Brsoivs Michael Freeman Jim Blessing Marty Cohen*	Morgan Stanley Exgen Ameren CUB
June 14, 2004	1-4 p.m.	Chicago	Scenario 4 Scenario 5 Scenario 6	Michael Freeman Howard Haas Becky Lauren (Paul Weiss)	Exgen ICC Midwest Gen
June 22/23 or June 29/30	3 hours/ topic?	?	Symposium	OGC MISO PJM	
June 28, 2004	1 - 4 p.m.	Chicago	?		
July 6, 2004	1-4 p.m.	Chicago	?		
July 26, 2004	1-4 p.m.	Springfield	?		
Aug. 2, 2004	1-4 p.m.	Springfield	?		

*subsequent to the meeting, Mr. Cohen indicated he would be unavailable for presentation on this date.

The June 3rd meeting will be held in the main conference room at the Illinois Commerce Commission, 160 N. LaSalle, Suite C-800, Chicago. June 14, 28 and July 6 meetings will be held at Constellation New Energy, 550 W. Washington St., Suite 300, Chicago.

In each of the presentations, those who volunteered to be the presenters will provide a basic examination of the specific scenarios. This will be followed by a question and answer period designed to develop a consensus report of the possible pros and cons of each scenario from a procurement/regulatory oversight/market power/mitigation perspective. Each presenter should consider the portion of the agreed Issues List which has been designated as pertinent to the "procurement group" when preparing for and making their presentation.

Discussion was held regarding eliminating Scenario 4 and Scenario 5 from the list of areas for presentation. The discussion was tabled. It was explained that these are sets of scenarios that are going to be examined by the other Working Groups. Some may have more or less importance within a given Working Group but they need to be discussed because they may have implications in other groups.

Other topics raised were: (1) implications of FERC standards and barriers to overcome in scenario no. 4 (2) FERC standards (will be covered in the June 22-23 Symposium) (3) exploration of financial "only" products that have developed in PJM, how they were developed, how they work and what is needed to facilitate such markets (Symposium topic) (4) lessons from California (Symposium topic).

Discussion was held regarding topics that need to be coordinated with other working groups. It was decided that procurement and rate need significant coordination, however, those discussions should ensue after the end of our scheduled meetings,. Market power and procurement should be considered in the pro and con examination of the various scenarios. Questions were raised regarding market conditions. What is the current state of the current transmission system? How much concentration is there in each service territory? How is market monitoring going to address power? What are the State's, PJM and MISO roles in addressing these issues? The question arose as to whether these questions should be discussed before we get into scenarios but it was thought that we should handle market power in a nonspecific way, within the context of the pro/con discussion in each scenario.

The meeting was adjourned at 1:50 p.m.

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1 APPEARANCES: (Cont'd)

2 MR. MATT C. DEERING
3 306 West Church Street
4 Champaign, Illinois 61820

5 (Appearing on behalf of the Illinois
6 Independent Telephone Association)

7 MR. WILLIAM A. HAAS
8 6400 C. Street SW
9 Cedar Rapids, Iowa 52406

10 (Appearing on behalf of McLeodUSA
11 Telecommunications Services, Inc.)

12 MS. CHERYL HAMILL
13 222 West Adams
14 Suite 1500
15 Chicago, Illinois 60606

16 (Appearing on behalf of AT&T
17 Communications of Illinois, Inc.)

18 MR. MARK KERBER
19 225 West Randolph Street
20 HQ 25D
21 Chicago, Illinois 60606

22 (Appearing on behalf of Ameritech
Illinois)

MS. JULIE LUCAS
208 South La Salle
Suite 1760
Chicago, Illinois 60604

(Appearing on behalf of the Citizens
Utility Board)

21

22

1 APPEARANCES: (Cont'd)

2 MR. JOHN E. ROONEY
3 Sonnenschien, Nath & Rosenthal
4 8000 Sears Tower
5 Chicago, Illinois 60606

6 (Appearing on behalf of Verizon North
7 Inc. and Verizon South Inc.)

8 MS. SUSAN L. SATTER
9 100 West Randolph
10 Chicago, Illinois 60601

11 (Appearing on behalf of the People
12 of the State of Illinois)

13 MR. KEVIN SAVILLE
14 2378 Wilshire Boulevard
15 Mound, Minnesota 55364

16 (Appearing on behalf of Citizens
17 Telecommunications Company of
18 Illinois)

19 MR. DARRELL TOWNSLEY
20 205 North Michigan Avenue
21 Suite 3700
22 Chicago, Illinois 60601

(Appearing on behalf of Worldcom,
Incorporated)

I N D E X

	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1					
2					
3	JOHN J. MUHS				
	By Mr. Kerber	106		182	
4	By Ms. Satter		109		187
	By Ms. Lucas		117		
5	By Ms. Coppa		118		190
	By Ms. Naughton		158		
6	By Mr. Haas		177		
	By Judge Wallace		177		
7					
	ERIC PANFIL				
8	By Mr. Kerber	192			
	By Mr. Brady		193		
9					
	ROD COX				
10	By Mr. Haas	198			
	By Ms. Naughton		201		
11	By Ms. Satter		208		
12	KAREN H. BOSWELL				
	By Mr. Rooney	210		258	
13	By Ms. Satter		234		259
	By Ms. Naughton		249		
14	By Ms. Coppa		256		
15	CHARLOTTE F. TERKEURST				
	By Ms. Satter	264		317	
16	By Mr. Rooney		268		
	By Mr. Kerber		297		
17	By Mr. Saville		307		
	By Judge Wallace		320		
18					
	SUSAN SPEAR				
19	By Mr. Townsley	321			
	By Mr. Kerber		330		
20	By Mr. Brady		334		
	By Judge Wallace		340		
21					
22					

I N D E X

	<u>EXHIBITS</u>	<u>MARKED</u>	<u>ADMITTED</u>
1			
2			
3	Ameritech 1.1	105	108
	Ameritech 1.0 & 1.2		108
4	Ameritech 2.0 & 2.1		193
	McLeodUSA 1.0 & 1.2	197	200
5	McLeodUSA 1.1		200
	Verizon 1.0	e-docket	234
6	Verizon 2.0	209	234
	Verizon 3.0	e-docket	234
7	People's Verizon Cross 1	214	
	CUB/AG 1.0	264	267
8	CUB/AG 1.1, 1.2, 1.3, 1.4	e-docket	267
	CUB/AG 2.0, 2.1	e-docket	267
9	CUB/AG 3.0	e-docket	267
	WorldCom 1.0	321	330
10	WorldCom 2.0	e-docket	330
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1 by the other parties, there was a waterfall of new
2 issues that suddenly came back into the proceeding.

3 If you'd like, you know, going to the first
4 item, page 3, lines 43 through 48, the simple fact
5 of the matter is, what Ms. Boswell's testimony is
6 stating is that, in her opinion, consensus was
7 reached. There's opportunities to discuss it. Now,
8 suddenly, the same participants who were in the
9 negotiations, in her opinion, are not fulfilling
10 what our understanding was of the consensus.

11 Page 3, lines 57 through 59, is a discussion
12 of, you know, much work went into the workshop
13 process to develop a rule that contained as much
14 consensus among the parties as possible, reducing
15 the issues that would be litigated. You know, --

16 JUDGE WALLACE: Okay. On that one we don't
17 need to go any further. That doesn't violate any
18 workshop process, but we can't operate in a vacuum.
19 We have to acknowledge that we had seven or eight
20 workshops, and acknowledging that they actually went
21 on is okay, so that one stays in.

22 MR. ROONEY: Okay. The next, page 4, here

1 accuse other parties of jeopardizing the process, of
2 undermining the process, and I think that that is
3 highly prejudicial, and that is why there is that
4 exclusion that settlement negotiations should not be
5 included because it is prejudicial to say you're the
6 one who's not going along; you're the one who is
7 making this a problem.

8 What is the consensus? Mr. Rooney pointed out
9 that Ms. Boswell never identified who the parties
10 were to the consensus. Well, were these parties
11 industry people only? Is that a consensus? What
12 about the other parties? Well, that's not
13 identified. That's not discussed. When you say
14 consensus, is it fair to use that term without
15 saying who's part of that consensus, and I submit
16 that it is not. Ms. Boswell's understanding of what
17 consensus is could very easily be industry
18 consensus. We don't know that.

19 JUDGE WALLACE: All right. I think that --
20 well, the Commission is very committed to the
21 workshop process. We've used it extensively the
22 last two years in both the telecom and the public

1 utilities side. Both sides of the Commission, or
2 those two sides, utilities and telecom, have vast
3 experience with workshops. For the most part
4 everyone agrees that they are useful and valuable.
5 Hopefully they cut down on some litigation. I think
6 that the ground rules that everyone has sort of
7 morphed into the workshop process is that obviously
8 parties' positions, the parties are free to say
9 whatever they want in a workshop without fear of
10 that position coming back to haunt them.

11 On the other hand, the workshops are also the
12 place and the tool to reach consensus, and a
13 consensus, as I define it, is that the group that is
14 in the room that day agrees with that position, and
15 then in this particular instance Staff is suppose to
16 take that down that that was a consensus.

17 Otherwise, why would you continue to go through
18 workshop processes except for the sole purposes of
19 identifying issues that you're going to litigate
20 later, and it wouldn't take eight workshops to do
21 that, or I guess it did, right?

22 (Laughter)

1 what may have been discussed in a workshop there.
2 If anyone has any ideas on how to split that out,
3 otherwise, I would strike the sentences after "no"
4 and then leave the last two sentences in starting
5 with the words "doing so now". I know this is
6 rather -- I don't like this process but that's how
7 it has been moved. That's the way I am going to do
8 it. Those two or three sentences seem to be a
9 possible discussion of what may have taken place at
10 the workshop.

11 On the whole, when someone refers to that a
12 consensus was reached, I think that that is an
13 allowable statement to make because the purposes of
14 the workshops are to go and to reach consensus. And
15 I really don't want -- I won't allow cross to really
16 explore in great detail what consensus people
17 thought they met. But it's always been my
18 understanding that the consensus that's reached in a
19 workshop is the consensus of the parties that
20 attended that workshop. If anyone disagrees with
21 that, you can bring it out, if you want.

22 I am certainly trying to protect our

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Exhibit 11

**Response Of Commonwealth Edison Company To Motion In Limine To Exclude
Testimony Filed By The People Of The State Of Illinois And The Cook County State's
Attorney's Office, Citizens Utility Board And Environmental Law And Policy Center.**

Final Report of the Illinois Commerce Commission's Post-2006 Initiative

To Governor Rod R. Blagojevich and The Illinois General Assembly

Executive Summary

The Electric Service Customer Choice and Rate Relief Law of 1997 ("Restructuring Act") initiated an unprecedented restructuring of the State's electric power industry with the goal of developing an effectively competitive electricity market in Illinois. The new law provided Illinois electric utilities the opportunity to restructure their businesses, mandated a reduction in rates for residential customers and a rate freeze for all customers, and allowed customers the opportunity to achieve savings by purchasing electricity supply from alternative retail electric suppliers. As a result of the Restructuring Act's directives, dramatic and positive changes have occurred in the industry:

- Residential customers have benefited from one of the largest and longest rate reductions, and today are paying 20% less than they paid for electricity in 1994. The total savings statewide are estimated to be 3.5 billion dollars.
- Many new entities have entered Illinois to compete for electric supply. Customers have been given the power of choice, and have selected these alternative retail electric suppliers ("ARES").
- Many industrial and commercial customers have realized significant savings from selecting the Power Purchase Option ("PPO") or an ARES; some indicate that these savings have helped them to keep their business in Illinois rather than move to a lower cost state.
- Statewide service reliability has improved dramatically.
- Over 9000 MWs of new generation has been built in Illinois by private investors. These investors, and not customers, have mustered the capital to build these plants and have borne the risk of cost overruns as well as the potential of uneconomic results in stranded costs.
- Illinois utilities have restructured operations by divesting generation, and have become more productive and efficient in order to face the emerging competitive marketplace.

Illinois now faces the end of the Restructuring Act's transition period and must make significant decisions about how power will be procured for and electric service provided to Illinois customers in 2007 and beyond. These decisions will impact the

well-being of customers in the State, as well as the business climate and economy of Illinois.

Recognizing that the major Illinois utilities' existing long-term contracts will expire January 1, 2007, this Commission in early 2004 announced a plan to host a series of meetings and workshops to examine the future of the electric market in Illinois, public policy issues surrounding restructuring of the electric industry, and critical questions concerning procurement of supply to serve customers in the post-2006 environment. At that time, the State's largest electric utilities that no longer own generation must procure power in the wholesale market.

Chairman Edward Hurley and Commissioners O'Connell-Diaz, Wright, and Ford decided to tackle these issues in five working groups (Procurement, Rates, Competitive issues, Utility Service Obligations, and Energy Assistance), each one chaired by a different convener. In May, the five working groups set out to examine an extensive list of issues pertinent to each group. The task for each working group was to achieve consensus on as many substantive issues as possible. Where consensus was not reached on substantive issues, each group was to nonetheless reach consensus on a precise definition of the remaining issues and provide a list of possible resolutions (without attribution). A sixth working group (Implementation) was to be formed if and when it became clear that there would be a need for action by legislative bodies and/or Illinois State agencies. Such a working group was in fact formed in September.

Every significant stakeholder interest was represented in the workshop process, with the participants bringing the views of consumers, power generators, financial intermediaries, utilities, units of government, environmental organizations and others to bear on the important topics that will shape the future of the electric industry in Illinois. This diverse assembly of interested parties worked in a collaborative manner to identify issues, to clarify positions, to reach consensus where possible and to understand and narrow differences where consensus was not possible.

The undertaking was well worth the time and effort it required. Much has been achieved in a relatively short time. Significant issues that in other jurisdictions might have been aired in contentious litigation settings have been explored extensively in a well organized, efficient and respectful manner by parties who, despite some differing interests, all acted in good faith to arrive at a framework for emerging from the transition period established under the 1997 Restructuring Act. The Illinois Commerce Commission commends the spirit of cooperation with which all participants approached the process, as well as the enormous commitment of time and resources that were devoted to this unique effort.

Comments of the Illinois Commerce Commission

Participants of the Post-2006 process -- stakeholders and ICC staff alike -- have provided an invaluable service to the ICC, the General Assembly and the Administration as well as to the residents and businesses of the State of Illinois. Through an intensive 5-month process in which the participants studied and debated the issues facing Illinois post-2006 the stakeholders have ultimately arrived at policy conclusions in the form of consensus recommendations. There is a consistency and symmetry in the consensus opinions of each of the working groups which in many areas aligns with that of the Commission's Staff. Stakeholders and Staff have provided clear and consistent direction to the policy-makers in the State. This Commission interprets the key findings as follows:

- Illinois has benefited greatly under the framework the General Assembly put in place in 1997. Residential customers have enjoyed one of the largest rate reductions and longest rate freezes in the country. Large customers have also reduced cost through frozen rates and market based pricing. Reliability has also improved dramatically.
- In the Restructuring Act, the General Assembly charged the ICC to "promote the development of an effectively competitive electricity market." Illinois should continue down the path set out by the General Assembly in 1997 – a measured program toward competitive markets with strong regulatory oversight will result in the greatest consumers benefits.
- A competitive procurement process will deliver the most efficient pricing to customers over the long run.
- It is critical that in a restructured environment customers be provided "choice" in a variety of forms, including the opportunity to participate in demand response programs and to interconnect distributed generation. These choices are market-based in that they allow the customer to respond to real-time market prices for power while also promoting energy efficiency and conservation.
- While competitive procurement and market development are primary goals, stakeholders insist on consumer protections in the form of mechanisms that mitigate rate volatility and encourage rate stability and continuing regulatory oversight.

The Commission submits that Illinois is well positioned to move forward in the manner outlined by the stakeholders and Staff. Illinois' utilities are financially sound and providing reliable service. Substantial progress has been made to bring the benefits of competition to Illinois energy consumers.

to be made for Illinois are informed by the results achieved with procurement models elsewhere.

What is most significant about the procurement working group report is that the consensus items reflect the unanimous agreement of the working group participants. The consensus items endorse the General Assembly's choice of direction made in 1997 and express a commitment to take the next step toward the goals reflected in the Act of a workable competitive market. The procurement group reached consensus that a procurement approach should:

- Be accomplished through a competitive procurement method that facilitates diverse supplier participation resulting in market-based prices for power;
- Strike a balance between encouraging competitive market development and protecting consumers from market irregularities by facilitating stable rates, mitigating rate volatility and mandating ongoing regulatory oversight in the form of initial regulatory review to improve and monitor the process;
- Accommodate RPS, DSM, as well as low income assistance programs;
- Reflect lessons learned from other states.

B. Rates Working Group (“RWG”)

The RWG considered a wide variety of issues affecting retail rates in the post-2006 environment. Once again reflecting the unanimous agreement of the working group participants, the RWG reached consensus on the following:

- The acquisition costs incurred by utilities that adopt a full requirements competitive procurement process should be passed through to retail customers with no mark-up or return on the costs of power;
- The costs of energy efficiency, renewables, and demand reduction programs should be fully included in the utilities' commodity rates;
- Where procurement strategies expose utilities to risks that make hedging appropriate, utilities should at least partially hedge against variations in market prices and recover the prudent and reasonable costs of doing so.

C. Competitive Issues Working Group (“CIWG”)

The CIWG considered whether specific actions need to be taken to promote the development of competition in areas and markets in Illinois. The CIWG reached the following consensus:

- Competition in both the wholesale and retail market segments should be encouraged as complimentary and effective competition in both arenas will deliver value to customers;
- The ICC should focus on encouraging the development of serious demand response programs in Regional Transmission Organizations (“RTOs) and

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Exhibit 12

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Competitive Issues Working Group

May 12, 2004

Minutes

The first meeting was called to order at 10 a.m. by Commissioner Erin O'Connell-Diaz. Commissioner O'Connell-Diaz provided an overview of the entire Post 2006 Initiative workshop process that will culminate with Reports being issued by early September. It was announced that there will be weekly meetings of all of the Convener/Reporters every Friday.

Convener Philip R. O'Connor – Vice President – Constellation NewEnergy reiterated the goal of the process and that all discussions are to be free and open. Additionally, it was noted that conversations, discussions, representations in the workshop process are not to be quoted or utilized in any current or future Commission proceeding or other forum. A form of admonition regarding anti-trust issues was distributed to the parties. The parties proceeded to introduce themselves.

In attendance, there were representatives from ICC Staff, Electric Utilities (Exelon/ComEd, Ameren, Illinois Power, MidAmerican, Alliant) Retail Electric Suppliers ("RESs") (Ameren Energy Marketing, Constellation NewEnergy, MidAmerican, Peoples Energy Services, Exelon Energy Services), Other Potential RESs (Centrica/Direct Energy, Reliant), Independent Power Producers (Midwest Generation, Reliant, Dynegy), Consumer & Governmental Representatives (CUB, AG, City of Chicago, Cook County State's Attorney, Department of Commerce and Economic Opportunity, Lt. Governor Quinn, Center for Neighborhood Technologies), Consultants (GEV Corp., URM), Industrial Customers (IIEC, Trizec Properties), IBEW.

David Fein provided a brief update on the work of an overall attorney subgroup on the preparation of a Confidentiality Agreement. While the parties were unable to agree upon the use of a Confidentiality Agreement. The subgroup, led by ICC General Counsel Casey, has prepared a Confidentiality Agreement in the event that one is deemed necessary at some point in the process.

Meeting Schedule Discussion:

Goal -- Coordination/Double-up meetings with other working groups
Rates and Procurement Working Groups have a close nexus
Cities outside of Chicago for some meetings
Electronic participation – web-based ability to work together
Conference calling capabilities
Meetings Locations
Coordinate with Other Working Groups
Joint Meetings with Other Groups
Set Days for meetings

Objectives/Goals

Reach consensus on as many issues as possible.
Where consensus is not possible clearly define the issue and provide potential solutions.
Consider issues in two large groups of (1) policy; and (2) mechanics and implementation

A wide-ranging, free form discussion commenced that covered various topics, including:

What do we mean by competition and how to get it to work?

Residential customer issue will have major influence on discussion

Consider wholesale competitive issues in this working group because it will not be addressed in the Procurement working group.

Focus on Question 75 for overall policy discussion

Pre-reading material to get the discussion started

Core problem from Staff perspective is that customers need to be protected from failure of competition in the wholesale market. Lt. Governor shares concerns.

ICC may not have jurisdiction in various areas but can affect policies accepted by FERC and RTOs.

Need to deal with mechanics – there are a whole group of customers that are impacted because they are out in the competitive market today

Assume we can affect the outcome but develop protections in case actual outcomes may be inadvertently adverse.

Providers express interest in serving residential customers in Illinois.

Would like to see structure established to foster competition for this segment

To what extent should be consider Core v. Non-Core construct similar to California?

Whether there will be a default service is a better context for consideration

What should be the default mechanism other than hourly energy rates for residential and small commercial customers?

Texas

Default service model in Texas needs to be considered as a good model.

Over 40% of customers have chosen competitive suppliers

What about customers who don't choose?

TEXAS MODEL A GOOD TOPIC FOR A WORKSHOP

Texas statute distinguished between standard offer service and provider of last resort service

PUA allows competition for residential customers. In the near term (2007), don't expect to see competition happen. Want prudent purchasing practices for the utility with 100% of market. Price cannot be beat by marketers because utility should be able to procure it cheaper. Start with great skepticism.

Our issues overlap somewhat with the Utility Service Obligations Working Group.

IIEC - 16-111(i) – Utilities required to offer a bundled service to customers. General Assembly set a structure.

WORKSHOP ON THE WHOLESALE COMPETITIVE MARKET suggested.

WORKSHOP ON DSM OPTIONS suggest and the impact that PJM Tariffs might have on such options was mentioned as a good topic.

Models/Experiences in Other States Discussed

Status of Markets for Residential and Small Commercial

Wholesale Market in Illinois (liquidity, supply, role of RTOs)

Demand Response Programs

Wholesale Competition Approach - Paul Joskow Paper

Look at all of the Models

See how they all fit under Ill PUA

Possible MISO/PJM Workshop Discussed

Seams

Rules impact on wholesale competition

Rules impact on retail competition

How the Existing Law Impacts the Discussion

Suggestion that Working Groups address the framework of the existing law

Scheduling Going Forward

Agenda/Issues to be circulated in advance

Implementation & Mechanics of Competition

List of Areas/Issues/processes

Eg. Wet Signature

Policy Issues

Should any be stricken?

Should any be amplified?

Any issues missing? (look to Staff White Paper)

Middle of Week/Double-up for Meetings Preferred

List of Attendees will be distributed (email list, web access)

Goal for next meeting – list of issues that parties want addressed in the process and framework for consolidated

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Exhibit 13

**Response Of Commonwealth Edison Company To Motion In Limine To Exclude
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**DIRECT TESTIMONY OF WILLIAM STEINHURST
ON BEHALF OF THE CITIZENS UTILITY BOARD
AND THE COOK COUNTY STATE'S ATTORNEY'S OFFICE**

CUB-CCSAO Exhibit 2.0

June 8, 2005

TABLE OF CONTENTS

I. INTRODUCTION 1
II. REASONS FOR CONCERN WITH THE COMPANY'S REQUEST 4
III. REASONS FOR CONCERN WITH COMED'S PROPOSED CLEARING
PRICE AUCTION 10
IV. RECOMMENDATIONS FOR REJECTION OF PROPOSED AUCTION 22
V. RECOMMENDATIONS FOR AUCTION ENHANCEMENTS IF AN
AUCTION IS ORDERED 23
VI. CONTRACT LADDERING SCHEME 26
VII. SUPPLY ADMINISTRATION CHARGE..... 33
VIII. NEED FOR A CONSUMER OBSERVER 35
IX. INDEPENDENT STATE MARKET MONITORING ENTITY 41
X. ENERGY EFFICIENCY AND RENEWABLES..... 47

EXHIBITS

- CUB-CCSAO Exhibit 2.1
- CUB-CCSAO Exhibit 2.2
- CUB-CCSAO Exhibit 2.3

50 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

51 A. My testimony will address the proposal by Commonwealth Edison
52 (ComEd, the Company) to use a clearing price auction for procurement of
53 wholesale power to serve Basic Utility Service (BUS) load in its service territory.
54 I will begin by considering the heart of the Company's request, namely that the
55 Illinois Commerce Commission (Commission, ICC) consider only one procedure
56 for the procurement of power for BUS customers after the transition period and,
57 in approving that procedure, relieve the Company of any responsibility for the
58 results of procurement if the Company follows that procedure. I argue that this
59 request, while offering hypothetical benefits to customers, is too narrowly tailored
60 and should be rejected because it cuts off Commission review of the broad range
61 of options that should be considered as Illinois steps out from the transition
62 period.

63 I then consider witness Fagan's testimony on the state of the wholesale
64 markets and the implications for the Commission's consideration of the
65 Company's particular proposal, the clearing price auction proposal. I also discuss
66 various concerns about the particular type of auction proposed by the Company. I
67 conclude that while the structure of the Company's auction proposal is an
68 improvement over the New Jersey auction on which it is modeled, it has been
69 turned into a version that is less appropriate for BUS customers. I also point out a
70 number of other ways in which the Company's auction proposal fails to provide
71 necessary protections for consumers. I then recommend that the Commission

96 **Q. PLEASE ILLUSTRATE HOW THE COMPANY’S FILING AND**
97 **REQUEST ARE NARROWLY FRAMED.**

98 A. The Company witnesses consider procurement and competitive issues
99 only within the limited, specific context of an auction for full requirement supply.
100 Little or no room is allowed in the Company's picture of this proceeding for
101 consideration of rate impacts. The Company merely makes sweeping assertions
102 such as “competitive forces are our best tool to make sure that those costs are held
103 as low as reasonably possible”. *See, e.g.,* Company Exhibit 2.0 at 3. I do not
104 agree that the Commission's options are so limited.

105

106 **Q. WASN'T THERE A CONSENSUS ON THE COMPANY'S PROPOSED**
107 **AUCTION APPROACH?**

108 A. No, there was not. The Procurement Working Group did not come to a
109 consensus on a specific procurement method. In light of this lack of consensus,
110 the litigation process should provide the Commission with a broad view of the
111 options and alternatives open to it. ComEd ignores this lack of consensus in its
112 filing. It scarcely mentions other procurement options and fails to provide
113 analysis sufficient to support its conclusion that the full requirements auction
114 model best meets the criteria laid out by the Procurement Working Group.

115 Witness Clark claims that Professor William Hogan explains "why, of the
116 alternatives considered by the procurement working group, a full requirements,
117 vertical tranche auction would work best for Illinois.” Company Exhibit 1.0 at
118 19. However, witness Hogan makes no such comparison; his testimony discusses

119 the merits of ComEd's proposed method in a vacuum, with no relation to other
120 procurement strategies. He even concludes that "compared to alternative schemes
121 that might be considered by the Commission, the proposed auction approach is
122 more likely to 'foster development of an effectively competitive electricity market
123 that operates efficiently and is equitable to all consumers'" without considering
124 the full range of options the Commission might have at this point. Company
125 Exhibit 8.0 at 5-7. He only mentions in passing as alternatives the possibility of a
126 return to full regulation and other scenarios that would be considered extreme or
127 irrelevant.

128 According to witness Hogan, the only choice before the Commission is
129 whether to accept the proposal, or reject it and leave consumers totally vulnerable
130 to a California-style debacle. He assumes that there is no time to do anything
131 except implement an auction, as laid out by ComEd in its proposal:

132 In effect, delay is not really an option as to whether to have a new
133 procurement mechanism. The end of the existing contracts dictates
134 that there must be some new procurement mechanism, and the
135 proposed auction method provides a good balance of the objectives
136 of stability and efficiency.
137

138 Company Exhibit 8.0 at 40.

139 His only "alternative" involves what would happen if the Commission
140 does not approve ComEd's proposal and fails to approve an alternative
141 mechanism in time:

142 Faced with expiring contracts, exposure to spot prices, and perhaps
143 a continuation of existing rates induced by the absence of an
144 approved procurement mechanism, ComEd could not maintain the
145 status quo and would face certain choices. At one end of the
146 spectrum, ComEd could rely solely on the spot market and repeat

147 the risky choice made in California. At the other end, if the
148 Commission approved, ComEd might need to pursue hedging
149 contracts on its own, but outside the transparent, competitive
150 procurement framework it has proposed here. (*Ibid.* at 43)
151

152 In my opinion, the Commission's options are not so limited.

153

154 **Q. IS THERE ANOTHER CONCERN WITH HOW THE COMPANY HAS**
155 **LIMITED OR NARROWED THE MATTER BEFORE THE**
156 **COMMISSION?**

157 A. Yes. ComEd focuses on the positive outcomes associated with limiting
158 Commission decision-making after the auction has occurred. For example:

159 By approving the ComEd approach in advance (in this
160 proceeding), Illinois would have sent a clear signal to the market
161 about regulatory certainty. The decision would signal that the
162 State would employ a proven competitive procurement
163 mechanism, one that would provide short and medium term
164 contracts that would help reduce investment risks for potential
165 generation investors and potential retail suppliers.
166

167 Company Exhibit 8.0 at 42. And:

168 Assuring utilities cost recovery when they follow the approved
169 approach is not only just and reasonable to utilities, but it also
170 benefits customers since suppliers will be reluctant to participate
171 in, and reluctant to offer the best prices in, a process that may be
172 second guessed by the Commission after having been completed.”
173

174 Company Exhibit 1.0 at 13-14.

175 In a broad sense, ComEd's focus on ensuring that suppliers have the
176 proper incentives to participate in the proposed auction avoids the more important
177 questions of what prices are likely to come out of the auction. ComEd fails to

178 adequately address consumers' exposure to rates set under extreme circumstances.
179 Additionally, there is little consideration of the Commission's inability to protect
180 consumers from adverse outcomes in an auction. If auction anomalies are present
181 but not detected, or the region experiences severe price spikes at the time of the
182 auction, the Commission would be unable to protect consumers. Customers with
183 no supply alternatives would have no recourse.

184

185 **Q. DO YOU HAVE ANY CONCERNS ABOUT THE REQUESTS MADE BY**
186 **THE COMPANY?**

187 A. Yes, I do. The Commission faces two momentous decisions—the choice
188 of how to fashion a method for post-transition power procurement to serve Basic
189 Utility Service customers and the choice of mechanisms for the Company's cost
190 recovery under that new power procurement system.

191 For decades, procurement has been the responsibility of the retail utility
192 and cost recovery has followed traditional rate making principles, including after
193 the fact review of whether the Company's costs were prudent and resulted in just
194 and reasonable rates. In this proceeding, the Company has presented a single
195 option for the Commission's consideration, an option that relieves the Company
196 of the greatest part of its responsibility for the results of its power procurement
197 decision. The Commission and ComEd's BUS customers deserve better.

198 Foreseeing the need for these choices, the Commission wisely established
199 an investigation of the alternatives for procurement after the transition period,
200 well in advance of the end of that transition period. After numerous workshops

201 and meetings, the stakeholders who participated did not reach consensus on a new
202 system for procurement or a new approach to cost recovery. In those workshops,
203 there was sometimes agreement that certain approaches would work better if
204 fashioned in one way or another, but to my knowledge there was not agreement
205 among all the stakeholders that any one approach, even in the best form that could
206 be identified, would meet all the needs of customers and the State of Illinois. The
207 final report of the convener identified a "consensus" list of desired criteria for
208 procurement, but even if all Parties were to grant that this list was complete, it
209 does not address how those criteria should be neither prioritized nor, even,
210 whether any of them were essential. In fact, the final report stated that, "The
211 group agreed, given the wide range of opinions among the 'stakeholders', that it
212 would be next to impossible to recommend either a specific scenario or to rank
213 scenarios in order of preference." Final Report to the Illinois Commerce
214 Commission Presented by the Procurement Working Group, September 23, 2004,
215 at 2.

216 The Commission should consider broadly all the available options and
217 their potential impacts on all interests, including the smallest customers who are
218 the least able to shop for alternatives to BUS. Currently, there are *no* competitive
219 retail alternatives to BUS for residential customers. The Company's proposal
220 seeks to side step immensely important issues relating to responsibility for power
221 procurement decisions, as well as alternative methods and cost recovery for the
222 power procurement, including the prudence of divestiture.

223

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Exhibit 14

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**REBUTTAL TESTIMONY OF WILLIAM STEINHURST
ON BEHALF OF THE CITIZENS UTILITY BOARD
AND THE COOK COUNTY STATE'S ATTORNEY'S OFFICE**

CUB-CCSAO EXHIBIT 4.0

August 3, 2005

**REBUTTAL TESTIMONY OF
WILLIAM STEINHURST**

TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
I. INTRODUCTION	1
II. SUMMARY	2
III. OVERVIEW OF ISSUES AND RESTATEMENT	4
IV. PROPOSAL FOR ALTERNATIVE PROCUREMENT	32
V. PRUDENCE REVIEW OF PROCUREMENTS	43
VI. SPECIFIC CRITIQUES.....	45
A. Out-of-Date Data	45
B. Deregulation Study	46
C. Concerns About Market Power.....	48
D. Consumer Observer at Auction.....	50
E. Renewable Energy	53
VII. OTHER ISSUES	57
VIII. SUMMARY AND CONCLUSION	59

89 **Q. THE FIRST ISSUE YOU MENTIONED IS THE ABSENCE OF A**
90 **“PROCUREMENT DOCKET.” WHAT DO YOU MEAN BY A**
91 **“PROCUREMENT DOCKET?”**

92 A. Broadly speaking, I mean formal review of the broad range of portfolio design and
93 product procurement options for default service provision that should be considered
94 by the Commission as Illinois steps out from the transition period.

95 **Q. IS A PROCUREMENT DOCKET RELEVANT AND NEEDED AT THIS**
96 **TIME?**

97 A. Not necessarily. If the Commission adopts my recommendation that the Company
98 retain responsibility for default service portfolio design and procurement, subject to
99 Commission oversight, a procurement docket would not be essential. In the
100 alternative, if the Commission were to entertain the concept of pre-approving some
101 specific portfolio design or procurement method, such a proceeding should be
102 conducted.

103 As I discuss in detail below (and subject to a reservation explained at that
104 place in this testimony), the Procurement Working Group (PWG) of the
105 Commission's Post-2006 Initiative focused on quite a number of alternative
106 procurement scenarios. At one point in that consideration, a list of 18 suggested
107 characteristics of supposed "ideal" procurement processes was floated. Contrary to

108 suggestions by the Company in its rebuttal testimony,¹ the PWG did not reach
109 consensus about the desirability of any specific procurement mechanism, much less a
110 determination that one was “ideal.” As Staff put it in their report, “In the end, the
111 group chose not to recommend a specific procurement strategy.” *See* ComEd Ex. 1.2
112 at 6.

113 Given the absence of or, at least, limits to consensus in the PWG, the
114 Commission and the public deserve an opportunity to fully explore a range of options
115 for portfolio design and procurement. Should the Commission wish to consider pre-
116 approving a portfolio design or procurement method, a procurement docket would, at
117 least, afford all participants an appropriate forum in which to address unanswered
118 questions about how well different alternatives can be expected to serve the public
119 interest. It also would allow the Commission to make such a monumental decision
120 based on a complete record of evidence.

121 **Q. WHAT DID THE COMPANY ACTUALLY SUBMIT IN ITS INITIAL**
122 **FILING?**

123 A. The Company filed for approval of a single, narrowly-defined option—a vertical full-
124 requirements descending clock auction. The Company presented only that one option
125 and has not shown that this is the best option. For example, the Company has not
126 addressed the balance between price and volatility in its product selection as
127 recommended by Witness Salgo, nor has it analyzed the effect of procurement

¹ For example, the Company quotes a statement by Constellation Energy Commodities Group, Inc.’s witness Michael Smith, that “The Procurement Working Group last summer developed a list of 18 attributes of a successful procurement model and, of all the different structures considered, the Procurement Working

128 methods on default service consumers other than its favored, once-a-year auction.
129 *See generally* AG Ex. 2.0.

130 **Q. PLEASE EXPLAIN THE IMPACT OF THAT NARROW FILING ON THE**
131 **PRESENT PROCEEDING.**

132 A. Because only that narrow proposal is before it, the Commission is hampered in
133 carrying out the kind of review that is needed and appropriate at this transition point.
134 The present docket, as it has been framed, does not provide an opportunity to examine
135 fully the options open to the Commission. If, on the one hand, the Company had filed
136 for a post-transition period rate change with cost of service justification, as
137 contemplated by the Restructuring Law, the Commission and intervenors could have
138 reviewed those costs and the actions leading up to the need for them to see if they
139 constituted a just and reasonable result. That review could have included a full
140 prudence review.

141 Alternatively, the Commission could have been presented with a full
142 exploration of the range of options for procuring resources to serve default service
143 customers, comparing them objectively in terms of their impact on the costs and risks.
144 Such a proceeding could have allowed a reasoned determination of which approach
145 would best satisfy the needs of ratepayers and other parties. With the Company's
146 filing restricted to a single, specific approach, the Commission simply does not have
147 the information required for it to make a reasonably well-informed decision about
148 how to proceed.

Group determined that the Illinois Auction Structure best meets those attributes.” (ComEd Ex. 10.0 at lines 135-38)

190 leading to the disputed costs, and the Commission renders a decision as to whether
191 those costs were or were not prudently incurred.

192 Because of the unusual nature of this case as filed by the Company, ComEd
193 has left no room in this proceeding for such a review now and, apparently, forever.
194 Specifically, since this is not a rate case proceeding, no particular cost of service
195 evidence has been filed. There is no opportunity now for the Commission or
196 intervenors to examine any Company actions that may have led to incurring costs
197 (past, present or future) affecting default service rates. At the same time, the
198 Company's proposed auction approval would appear calculated to preclude any such
199 review in the future. In this landmark policy proceeding, should the Commission
200 blithely grant approvals that could effectively eliminate such an important consumer
201 protection and potentially give a permanent "pass" to what may have been some of
202 the most influential resource decisions ever made by the Company's management, I
203 believe that the Commission would be misrepresenting consumer interests.

204 **Q. IN YOUR EXPERIENCE, WHAT KIND OF ISSUES ARE TYPICALLY**
205 **MATTERS OF CONCERN IN SUCH A PRUDENCE INVESTIGATION**
206 **SUCH AS ONE THAT MIGHT BE UNDERTAKEN CONCERNING THE**
207 **COMPANY'S DIVESTITURE ACTIONS?**

208 A. It is not possible to identify all such issues in the abstract. Identification of
209 prudence concerns is generally based on the utility's specific costs and a review of
210 particular actions leading to those costs, along with related documentation.

211 Taking the Company's decisions to divest itself of its generation resources
212 following adoption of the Restructuring Law as one example, it is clear that whatever

260 of its prior decision to divest. In other words, the Company claims to be helpless to
261 fulfill its duty as default service provider in any way other than to be a price taker in
262 the regional wholesale markets and asserts that its proposed auction is the best way to
263 do so. In so arguing, the Company misrepresents both the breadth of procurement
264 options open to it, as well as the considerable flexibility given to it under Illinois's
265 restructuring legislation. It is my understanding that the Company continues to have
266 all the flexibility it always did in choosing resources and procurement methods, plus
267 additional, new flexibility in how it runs its business.

268 The company further argues that the Commission should unilaterally reduce
269 its oversight role by eliminating much of its ability to protect consumers. The
270 Commission, however, is still responsible for oversight and for ensuring that
271 company is delivering default service at just and reasonable rates.

272 My testimony simply called for the Commission to reject the Company's
273 proposal, to open an investigation of the full range of procurement options for default
274 service, and to affirm that, regardless of which procurement method is employed,
275 retail rates remain subject to traditional regulatory standards of justness and
276 reasonableness, which entail a prudence review of the company's decisions. Nothing
277 in my recommendation is outside of the Commission's jurisdiction or undoes retail
278 competition in Illinois.

279 **Q. WHAT IS THE FOURTH ISSUE YOU WANT TO ADDRESS?**

280 A. The Company's rebuttal testimony goes to great lengths arguing that the wholesale
281 market flaws documented in the direct testimony of witnesses Fagan and Rose, and
282 referenced by my direct testimony, are irrelevant to the Commission's task in this

725 Q. Would the Commission be in a better position if, as Dr. Steinhurst
726 proposes, it ordered ComEd “to carry out the necessary procurement
727 under traditional ratemaking” (Steinhurst Dir. 4, 23:530-533)? A. No.
728 To begin with, Dr. Steinhurst does not explain what he mean by these
729 terms, but the meaning matters. Since ComEd does not own any
730 capacity of its own, what exactly is a “procurement under traditional
731 ratemaking” that is conceptually different from going to the market to
732 acquire the necessary supplies?

733 ComEd Ex. 16.0 at lines 929-35.

734 **Q. IN YOUR DIRECT TESTIMONY, DID YOU MAKE, IN FACT, A**
735 **RECOMMENDATION FOR PROCURING POWER?**

736 A. Yes, I did make such a recommendation.

737 Specifically, I proposed that the Commission order ComEd to retain
738 responsibility for portfolio design and product procurement using a soundly designed
739 and actively managed resource portfolio.

740 I would also point out that that this docket was not structured to weigh one
741 portfolio design against another or one procurement method against another. Rather
742 it is a narrowly framed proceeding in which the Commission is limited to approving
743 or rejecting the Company's tariff proposals.

744 **Q. DIDN'T THE COMPANY CONDUCT A THOROUGH EVALUATION OF**
745 **OTHER OPTIONS?**

746 A. No, it did not present such an evaluation in its testimony. For example, with regard to
747 its portfolio design, the Company has not presented evidence that an assemblage of
748 100% fixed price products is the best balance of rate stability and price, or that its
749 choice of term lengths and allocation percentages of the portfolio among them is the

750 best choice. As to its procurement design, just to take the simplest example, the
751 Company has not compared the expense of multiple procurement dates in each year
752 to the diversity and risk mitigation that approach would offer. Beyond these simple
753 examples, the Company has not presented objective evidence comparing its proposal
754 to any other.

755 The Company rebuttal witnesses make much of our opposition to its proposal,
756 charging that such opposition amounts to "ignor[ing] the fact that any *realistic*
757 alternative will also necessarily involve market-based procurement." ComEd Ex. 9.0
758 at lines 507-08. While this is another mischaracterization of our testimony, this
759 comment does suggest that the Company has not explored non-market-based options.

760 It seems that the Company simply *assumes* that its proposal will produce the
761 best of all possible outcomes. For example:

762 The Auction Process is designed to harness the competition for the
763 supply of the portfolio management service and to bring the benefits of
764 the competition that exists in wholesale market to the retail customers.
765 *It is the best procurement process for customers whatever the state of*
766 *the wholesale markets.* If there is a problem with the wholesale
767 markets, that problem must be fixed directly and cannot be fixed by
768 ComEd's choice of procurement mechanism."

769 ComEd Ex. 11.0 at lines 444-49. In each of the Company's proposed auctions,
770 bidders would be competing to provide the service of assembling a fixed-price,
771 single-product load following service. That competition would deliver *some* benefit.
772 However, given the magnitude of the costs and risks from uncompetitive wholesale
773 markets, it is not appropriate to simply give up on protecting consumers from those
774 costs and risks without seriously examining the alternatives. Likewise, even if we
775 assumed that an auction procurement for the Company's proposed portfolio of

776 products would necessarily be better than any other procurement method that could
777 be employed (an assumption that has not been demonstrated), it has not been
778 demonstrated that the proposed product mix is the best selection.

779 **Q. DIDN'T THE PROCUREMENT WORKING GROUP REACH CONSENSUS**
780 **THAT AN AUCTION BEST MEETS THE CRITERIA IN THE FINAL**
781 **REPORT?**

782 A. No. As I have explained above, there was no consensus on the proposed auction. But
783 before I discuss this issue any further, I wish to explain my understanding of the
784 status of the PWG's discussions and why I am offering testimony on that subject. It is
785 my understanding that the discussions and information exchanged in those workshops
786 was not to be used in subsequent litigation. In particular, the following language was
787 contained in the Workshop Preamble:

788 In order to facilitate free and open discussions the stakeholders wish to
789 assure that statements made, positions taken, and documents and
790 papers provided by the stakeholders in the Post 2006 Initiative Process
791 will not be used by the stakeholders in any subsequent litigation,
792 including administrative proceedings before the Illinois Commerce
793 Commission, the Federal Energy Regulatory Commission, and other
794 federal, state, or local governmental authorities.

795 *See*, <http://163.191.150.5/ec/docs/040511ecPostPreamble.doc>. I also understand from
796 counsel that there may be a dispute as to whether such discussions and materials
797 relating to them should be considered in this proceeding. However, in the event that
798 it is determined that such discussions and information are to be considered in this
799 proceeding, I set forth my thoughts below.

800 **Q. DO THE STAKEHOLDERS WHO CURRENTLY SUPPORT THE**
801 **COMPANY’S PROPOSAL REPRESENT A COMPLETE CROSS SECTION**
802 **OF INTERESTS?**

803 A. No. A Company rebuttal witness states, “the vast majority of the witnesses support
804 the use of a full requirements, competitive auction process to procure supply for
805 ComEd’s customers.” ComEd Ex. 10.0 at lines 20-21. However, to put this in
806 context, it is necessary to examine the interests of those who do and do not support
807 the Company’s proposal.

808 It is certainly in the Company’s interest for it (and all of its witnesses) to
809 support the Company’s proposal. Chief among the reasons for this are that the
810 Company’s proposal is carefully tailored to relieve it of any and all risks involved
811 with its obligation to provide default service, and that it allows the Company to side
812 step the possibility of prudence review of any past actions, such as those associated
813 with its divestiture of generating assets.

814 Similarly, it is in the interest of potential auction participants to support the
815 Company’s proposal, at least in its general form. If there are alternative procurement
816 strategies that would result in lower prices, why would potential auction participants
817 have an interest in seeing those alternatives advanced? Likewise, competitive retail
818 suppliers have little interest in promoting a default service portfolio or procurement
819 strategy that may do better than the Company’s proposal.

820 It is the consumer interests that have a motivation to seek improvements in
821 default service procurement that may reduce cost and risk to those consumers. The
822 US DOE and the IIEC speak to specific interests of large consumers, both seeking a

823 fixed price alternative to the hourly energy price service proposed by the Company.
824 CUB, CCSAO, and the AG focus on the concerns of small customers—those least
825 likely to have realistic alternatives to default service.

826 The issue before the Commission is not how many parties or witnesses
827 support the Company’s proposal, but whether that proposal best serves the interests of
828 consumers and others. I believe it does not.

829 **Q. HAVE OTHER STAKEHOLDERS ADVOCATED A PROCUREMENT**
830 **MECHANISM SIMILAR TO YOUR PROPOSAL?**

831 A. Witness Salgo suggests “more active portfolio management, utilization of the many
832 other standard products available in the market, and the possibility of negotiating
833 prices and other contract terms with suppliers.” AG Ex. 2.0, p. 15, lines 21-22; p. 16,
834 lines 1-5. As I have explained above, this concept is consistent with my
835 recommendation.

836 **Q. EARLIER IN THIS TESTIMONY YOU EXPLAINED HOW EACH OF THE**
837 **PROCUREMENT APPROACHES CONSIDERED BY THE PWG WAS ALSO**
838 **CONSIDERED BY THE GROUP IN RELATION TO A SET OF 18**
839 **CRITERIA. PLEASE RESTATE THOSE CRITERIA.**

840 A. Certainly. I will first point out that while these items are called “consensus criteria”
841 in the PWG report, they are correctly identified merely as “desirable characteristics.”
842 See ComEd Ex. 1.2 at 5-6. Those 18 characteristics are:

- 843 1. It should be highly transparent.
844 2. It should allow for a competitive procurement approach.

- 845 3. It should provide for the opportunity for full cost recovery to the utilities if
846 they follow the Commission approved procurement approach.
847 4. It should result in market-based rates for customers.
848 5. It should include a mechanism for translating the result of the process into
849 retail rates.
850 6. It should facilitate and encourage supplier participation of all types in the
851 wholesale market.
852 7. It should facilitate stable rates and mitigate rate volatility for applicable
853 customers for relevant time periods.
854 8. It should allow for and accommodate RPS, DSM, low-income assistance
855 programs, etc.
856 9. It should require an initial regulatory review to approve and an ongoing
857 regulatory review to oversee and improve the procurement process.
858 10. It should be capable of implementation prior to January 1, 2007.
859 11. It should provide specific guidance on crucial issues such as procurement
860 methodology, rate design, and allocation of risks and provide flexibility to
861 respond to market conditions.
862 12. It should provide an agreed upon procurement methodology, which if
863 followed, minimizes the need for after the fact prudence review.
864 13. It should include reasonable features or contractual safeguards to manage
865 counterparty credit risk.
866 14. It should reflect lessons learned from States that have restructured and the
867 current state of competition in the retail and wholesale markets in Illinois.
868 15. Stakeholders should have the opportunity to review and comment on the
869 procurement process and proposed actions.
870 16. It should clearly assign accountability and risks.
871 17. It should provide for prompt regulatory review and approval.
872 18. The stated public policy goals of insuring resource adequacy should be
873 considered in the procurement process or elsewhere.

874 **Q. HOW DOES YOUR PROPOSED ALTERNATIVE RATE AGAINST THE**
875 **PWG’S 18 CRITERIA AND THE ICC’S SUMMARY “CONSENSUS ITEMS”?**

876 A. It rates rather well on those items with the exception of two items that seem tailored
877 mainly to benefit the Company.

878 **Q. PLEASE EXPLAIN.**

879 A. I’ll begin with the two items I mentioned in the immediately preceding answer. The
880 first is item 3, which calls for “full cost recovery” for utilities that “follow the

881 Commission approved procurement approach.” The second is item 12, which calls
882 for “minimiz[ing] the need for after the fact prudence review.” While the Company
883 may wish to obtain such guarantees and might refuse to adopt a novel procurement
884 approach, such as its own proposal, in their absence, I see no compelling reason for
885 the Commission to make such a concession. I would note that while my proposal
886 does not guarantee such recovery, it does not prevent full cost recovery. Instead, it
887 makes such recovery subject to traditional standards, such as prudence.

888 I suspect that some might also argue that my proposal would not “result in
889 market-based rates for customers” (item 4). If one artificially defines “market-based
890 rates for customers” as “rates that are a mechanical computation from the result of a
891 pre-defined product procured in an auction,” I suppose one might reach that negative
892 conclusion. However, my proposal would produce default service rates that flow
893 from market results to the extent that the Company chooses to use markets for
894 procurement and other types of costs to the extent it does not. I see no reason to
895 arbitrarily prefer rates based on markets to rates based on costs or a mixture of the
896 two.

897 Similarly, some might complain that my proposal does not provide “specific
898 guidance on crucial issues such as procurement methodology, rate design and
899 allocation of risks and provide flexibility to respond to market conditions” (item 11).
900 However, under my proposal, no particular guidance on rate design is needed. In
901 fact, I would argue that rate design decisions are best made in a rate design
902 proceeding, not a procurement proceeding. Nothing in my proposal limits the
903 Company’s flexibility to respond to market conditions, but rather my proposal would

904 free the Company to do so, as it should, rather than locking into a specific, one-time
905 purchase. Also, my proposal's allocation of risk is quite clear. While the Company is
906 capable of making management decisions on procurement methodology (or could
907 acquire such capability if it chose to), if it actually wanted guidance on that issue, it
908 could have structured this proceeding to fully explore the options.

909 Turning to the remaining items, my proposal would increase transparency, at
910 least from the perspective of every party other than the Company and ICC Staff (item
911 1) and give ample opportunity for all stakeholders to review and comment on
912 proposed actions (item 15); moreover, it leaves the Company free to use a multitude
913 of competitive procurement approaches (item 2); would use standard “mechanism[s]
914 for translating the result of the process into retail rates” (item 5), and encourage
915 participation by even more types of suppliers than the Company’s single-product
916 auctions (item 6).

917 My proposal would be just as capable as the proposed auction of
918 “facilitat[ing] stable rates and mitigat[ing] rate volatility” (item 7) and “allow[ing] for
919 and accommodate RPS, DSM, low-income assistance programs” (item 8). It could
920 include such “reasonable features or contractual safeguards to manage counterparty
921 credit risk” (item 13) as the Company deems necessary and “insure resource
922 adequacy” (item 18) as well as the Company’s proposal, if not better, since my
923 proposal might actually lead to the addition of new, optimally-sited generation
924 resources.

925 While the Company’s proposal may reflect the latest “lessons learned” in New
926 Jersey (item 14), the testimony of Witnesses Fagan and Rose make it clear that

927 Illinois' wholesale market situation differs from New Jersey's. Furthermore, as
928 Witness Rose points out in his direct testimony, the lessons in other states are not
929 uniformly in favor of the Company's proposal.

930 My proposal would certainly provide "initial regulatory review" via this
931 proceeding and provide much greater "ongoing regulatory review to oversee and
932 improve the procurement process" (item 9) than the Company's proposal. It can be
933 implemented by the end of the transition period as it requires no new procedures or
934 special lead-time other than that required by the Company to carry out procurement
935 (item 10). Unlike the Company's, my proposal does not involve any artificial or
936 inherent lead times. The Company might argue that it would require lead-time to
937 reconstitute its procurement functions; functions that it chose to spin off to
938 unregulated affiliates. However, if the Company finds it cannot reconstitute those
939 functions as quickly as it needs to, it can certainly contract them to a third party for as
940 long as necessary.

941 My proposal and the Company's both clearly assign accountability and risks
942 (item 16), but I believe that my proposal is a more fair and reasonable assignment
943 than the Company's, which places all risk on wholesale suppliers and consumers. As
944 for "prompt regulatory approval," (item 17) it might be argued that this should mean,
945 "prompt approval of the results of each particular procurement." I have explained
946 elsewhere why the Company's proposal provides insufficient time for a reasonable
947 review. I also do not believe that the degree of "promptness" sought by the Company
948 is necessary except under its proposed procurement method, if at all.

949 **Q. HAS A DIFFERENT TAKE ON THE DESIRABLE CHARACTERISTICS OF**
950 **METHODS FOR PROCURING DEFAULT SERVICE BEEN OFFERED IN**
951 **THE PROCEEDING?**

952 A. Yes. In its own Final Report, the ICC stated that the PWG had produced four
953 “consensus items.” *See* ComEd Ex. 1.1 at 7. This shorter list stated that a
954 procurement approach should:

- 955 • Be accomplished through a competitive procurement method
956 that facilitates diverse supplier participation resulting in
957 market-based prices for power;
- 958 • Strike a balance between encouraging competitive market
959 development and protecting consumers from market
960 irregularities by facilitating stable rates, mitigating rate
961 volatility and mandating ongoing regulatory oversight in the
962 form of initial regulatory review to improve and monitor the
963 process;
- 964 • Accommodate RPS, DSM, as well as low income assistance
965 programs;
- 966 • Reflect lessons learned from other states.

967 If this short list represents a more genuine assessment of the level of consensus,
968 clearly that “consensus” provided little guidance as to a specific choice for the Post-
969 2006 system.

970 In fact, I would note that my recommendation is fully consistent with four
971 “consensus” items. Nothing in my recommendation would preclude the judicious use
972 of competitive procurement by ComEd in meeting its default service obligations.
973 Opening up the Company's procurement to a more diverse range of portfolio
974 components and procurement styles could encourage *more* diverse supplier
975 participation, rather than limiting participation to those capable of or interested in

976 bidding just another one of many identical vertical tranches. Certainly, nothing in my
977 proposal would interfere with market-based prices for power procured by the
978 Company for this purpose, although the Company would have additional options to
979 consider.

980 Compared to the Company's proposal, I contend that my proposal has (1) a
981 greater potential than the Company's to balance wholesale competitive market
982 development, (2) would do nothing to harm retail competition, (3) has greater ability
983 to protect consumers and mitigate rate volatility, and (4) surely facilitates ongoing
984 regulatory oversight. In addition, my proposal fully accommodates RPS, DSM, and
985 low-income assistance. Lastly, it reflects many of the lessons learned in other states,
986 such as the recent experience recounted by Witness Rose, not just the lessons learned
987 in New Jersey, the one state that procures default service power via an auction like
988 that proposed by the Company.

989 **V. PRUDENCE REVIEW OF PROCUREMENTS**

990 **Q. PLEASE EXPLAIN YOUR UNDERSTANDING OF THE COMPANY'S**
991 **POSITION ON PRUDENCE REVIEW OF FUTURE PROCUREMENTS.**

992 A. The Company appears to want the approval of the procurement process to amount to
993 a waiver of future prudence review, including company procurement actions taken if
994 the auction result is rejected. For example, Witness Hogan argues that this would be
995 justified by the Company's supposed lack of discretion:

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY)	
)	
Proposal to implement a competitive)	No. 05-0159
procurement process by establishing Rider)	
CPP, Rider PPO-MVM, Rider TS-CPP and)	
revising Rider PPO-MI)	

Exhibit 15

**Response Of Commonwealth Edison Company To Motion In Limine To Exclude
Testimony Filed By The People Of The State Of Illinois And The Cook County State's
Attorney's Office, Citizens Utility Board And Environmental Law And Policy Center.**

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BEFORE THE

ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
)
COMMONWEALTH EDISON, Proposal) No. 05-0159
to implement a competitive)
procurement process,)
)
)

Chicago, Illinois
July 5, 2005

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

BEFORE:

THE COMMISSION, en banc

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10 GIORDANO & NEILAN, Ltd., by
11 MR. PATRICK N. GIORDANO
12 360 N. Michigan Avenue
13 Suite 1005
14 Chicago, Illinois 60601
15 Appearing for BOMA;

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16 OFFICE OF GENERAL COUNSEL OF THE
17 ILLINOIS COMMERCE COMMISSION, by
18 MR. CARMEN FOSCO
19 527 E. Capitol Avenue
20 Springfield, Illinois 62701
21 Appearing for the ICC;

1 APPEARANCES (Continued)

2 CONSTELLATION NEWENERGY, INC., by
3 MS. MYRA KAREGIANES
4 550 W. Washington Boulevard
5 Suite 300 Chicago, Illinois 60661
6 Appearing for Constellation NewEnergy;

7
8 THE ILLINOIS ENERGY ASSOCIATION, by
9 MR. JOHN MONK
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16 SULLIVAN REPORTING COMPANY, by
17 Carla L. Camiliere, CSR,
18 License No. 084-003637
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Witnesses: Direct Cross direct cross Examiner

(None presented.)

E X H I B I T S

Number For Identification In Evidence

(None marked.)

1 CHAIRMAN HURLEY: This is a special open
2 meeting of the Illinois Commerce Commission pursuant
3 to previous notice.

4 We have available today in Chicago
5 Commissioners Lieberman, Wright, O'Connell-Diaz, Ford
6 and Hurley. Obviously, we have a quorum. I don't
7 think anybody wanted to miss this one, and we can
8 proceed.

9 This is an oral argument in Docket
10 No. 05-0159, which is Commonwealth Edison Company,
11 and 05-0160, et al., which is a consolidated Ameren
12 Companies. These are proposals implementing
13 competitive procurement process by establishing Rider
14 CPP, Rider PPO.

15 I'll give you a copy of this. We all
16 know why we're here. We're here because we have
17 before us a motion to dismiss filed by the People of
18 the State of Illinois, the Cook County State's
19 Attorney, the Citizens' Utility Board, The
20 Environmental Law and Policy Center in the
21 Commonwealth Edison case, and I think in the Ameren
22 cases all those parties, save Cook County. All the

1 same parties.

2 So there is a motion to dismiss.

3 There have been filings pursuant thereto. And the
4 Commission in its infinite wisdom decided to hold an
5 oral argument to hash out the issues in the motions
6 to dismiss, which we did about a week ago.

7 And we have ten parties or I shouldn't
8 say that. We have ten presenters today. Ten people
9 have suggested that they would like to be heard by
10 the Illinois Commerce Commission on this issue.

11 So that everybody knows who's going to
12 be presenting, I have a list here. On behalf of the
13 Attorney General and the proponents of the motion, we
14 have Benjamin Weinberg, from the Attorney General's
15 Office.

16 Since a lot of us don't know you, why
17 don't you just raise your hand and introduce
18 yourself. Welcome to the Commission.

19 MR. WEINBERG: Thank you.

20 CHAIRMAN HURLEY: On behalf of Commonwealth
21 Edison the presentation will be by E. Glenn Rippie.

22 On behalf of the Ameren Companies, we

1 have Chris Flynn.

2 On behalf of the Staff of the ICC, we
3 have Carmen Fosco.

4 On behalf of Constellation New Energy,
5 MidAmerican Energy Company, Peoples Energy Services
6 and US Energies Savings Corporation, we have
7 Christopher Townsend.

8 On behalf of Locals 1551 and 702 The
9 International Brotherhood of Electrical Workers, we
10 have Christopher Hexter.

11 Midwest Independent Power Suppliers,
12 the Electric Power Supply Association will be
13 represented today by Freddie Greenberg.

14 The Building Owners and Managers
15 Association of Chicago will be represented by Patrick
16 Giordano.

17 And the Illinois Energy Association
18 will be represented by Mr. Jim Monk.

19 And finally, the Constellation Energy
20 Commodities Group will be represented by Myra
21 Karegianes.

22 I'm told by Michelle Mishu (phonetic)

1 who put this together for the Commission that each
2 presenter participating in oral argument will be
3 allowed 15 minutes for their presentations to the
4 Commission. And you may reserve, prior to that time
5 for rebuttal. I think rebuttal, for anybody who
6 wants it, will go pretty much in the same order.

7 If we are ready, the first
8 presentation is on behalf of the proponents on the
9 motion to dismiss, and that presenter is Benjamin
10 Weinberg from the Attorney General's office.

11 I would like to ask an opening
12 question, if you don't mind, and I'm sure you don't.
13 Because the question -- I'm really posing the
14 question to all the participants here to try to at
15 least touch on, in your presentation to the
16 Commission.

17 The first question, it's compound.
18 It's a compound question. We have a process here at
19 the Commission, which we call the post-2006 process.

20 I would like to know from the various
21 presenters whether this issue was raised in that
22 process, and how -- what the outcome of the issue was

1 in that process. And as an offshoot, I'd like you to
2 do a little statutory interpretation for me:

3 What did the legislature intend when
4 they gave the Commission the '96 or, if you will, the
5 '97 Act? What did the legislature intend for the
6 Commission to do at the end of the rate freeze?

7 So it's kind of a compound question,
8 but I would like everybody to touch on that in your
9 presentations.

10 Having said that, it's all yours
11 Mr. Weinberg.

12 MR. WEINBERG: Thank you, Mr. Chairman.

13 CHAIRMAN HURLEY: Sure.

14 MR. WEINBERG: Members of the Commission,
15 Mr. Chairman, my name is Benjamin Weinberg. I'm
16 chief of the Public Interest Division of the Attorney
17 General's Office.

18 COMMISSIONER O'CONNELL-DIAZ: Mr. Weinberg,
19 could you speak into the microphone because I think
20 the people in the back can't hear you.

21 CHAIRMAN HURLEY: I didn't even check. Are we
22 connected with Springfield, and can you hear us down

1 there?

2 SPRINGFIELD: Yes. The presenter needs to
3 speak into the microphone.

4 MR. WEINBERG: Is that better?

5 CHAIRMAN HURLEY: That's good.

6 MR. WEINBERG: Mr. Chairman, let me answer your
7 first question or at least the first part of it
8 immediately.

9 And I'll do it this way: The issue
10 before the Commission today is whether the Commission
11 has authority to, let's just call it, bless the
12 auction. All right.

13 Now, in the post-2006 final staff
14 report, the Staff suggested -- proposed that, quote,
15 "The Commerce Commission should clarify its authority
16 to implement the use of any procurement methodology
17 in general at a vertical auction in particular."

18 Now, I believe where this came from is
19 several comments that ComEd's general counsel and
20 also BOMA's counsel had made on the record. And I'll
21 quote ComEd's counsel, which was counsel's statement
22 on this direct issue, which I believe the general

1 counsel had referred to in his November 23, 2004
2 letter.

3 His statement is with respect to the
4 following issue -- this was submitted in a memorandum
5 that addressed this. It was, quote: "The ICC has
6 authority under existing law to approve a tariff that
7 passes through the customers the costs incurred by a
8 utility to procure electricity through a competitive
9 procurement process." In other words, this was
10 ComEd's argument.

11 Along with that counsel for ComEd
12 stated that, and I quote: "This is not a consensus
13 item, and should be viewed as an opinion of
14 Commonwealth Edison which was not discussed in PWG,
15 the Procurement Working Group meeting."

16 Similarly, counsel for BOMA submitted
17 it in writing, a statement, disagreeing with ComEd's
18 counsel that it was authorized. But, again, agreeing
19 that it had never been discussed in the working
20 group.

21 Therefore, this is, we believe, the
22 first time that this matter is being taken up. Just

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY)	
)	
Proposal to implement a competitive)	No. 05-0159
procurement process by establishing Rider)	
CPP, Rider PPO-MVM, Rider TS-CPP and)	
revising Rider PPO-MI)	

Exhibit 16

**Response Of Commonwealth Edison Company To Motion In Limine To Exclude
Testimony Filed By The People Of The State Of Illinois And The Cook County State's
Attorney's Office, Citizens Utility Board And Environmental Law And Policy Center.**

MEMORANDUM

TO: Illinois Commerce Commission

FROM: Phillip A. Casey
General Counsel

DATE: November 23, 2004

SUBJECT: OGC Comment and Analysis on Working Group Implementation Reports

Following the Commission's efforts in February 2004 to establish a process whereby stakeholders could come together to discuss the future of the state's electric market and identify public policy issues surrounding the deregulation of the electric industry in Illinois, the five persons appointed to convene working groups led numerous discussions, oversaw the presentation of many differing points of view, and prepared in-depth reports describing the substance of the groups' work.

Following the Commission's receipt of the working group reports, I took steps to convene what was in essence a sixth group, consisting of each of the five working group conveners, myself, and several other members of the Office of General Counsel. The goal of our group has been to identify means of implementing steps identified as appropriate by the working groups as Illinois approaches the end of the "mandatory transition period" created by Article XVI of the Public Utilities Act (often referred to as the Customer Choice Law). In order to crystallize the implementation recommendations of the various working groups, I asked the five conveners to prepare implementation reports setting forth assessments of each group as to steps that may need to be taken by the Commission (orders or rulemakings) or by the General Assembly (changes in the law). While the primary focus of OGC's efforts was to have been those recommendations that reflected a consensus of the various working group members, I also expressed an interest in matters of importance that enjoyed less than complete consensus.

The conveners made extraordinary efforts, including the preparation and circulation of draft reports, receipt of comments, the preparation of revised drafts, and the receipt of yet further comments from working group members. All of these efforts have led to a fuller understanding of the issues we face, and the views of various stakeholders. At the same time, these efforts have demonstrated that however valuable consensus might be, it is not a reasonable goal to expect with respect to many of the concerns that have been expressed throughout the workshop process.

What follows is the Implementation Working Group Report, consisting of an introduction in the format suggested for the other working groups, followed by the documents we received from the conveners, along with comments prepared by the Office of General Counsel that address issues raised and recommendations made.

We thank the members of the working groups and especially the conveners for all of their efforts in bringing these documents together. Collectively, they represent a body of information and analysis that will greatly assist those who must make the ultimate decisions concerning the future of the electricity market in the State of Illinois. We have undertaken to offer our thoughts in order to assist in the efforts that have gone before.

We look forward to discussing these matters with you.