

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company )  
 )  
Proposal to implement a competitive )  
procurement process by establishing )  
Rider CPP, Rider PPO-MVM, Rider )  
TS-CPP and revising Rider PPO-MI )

Docket No. 05-0159

**INITIAL BRIEF**

**OF**

**PEOPLES ENERGY SERVICES CORPORATION**

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<sup>1</sup> Staff moved, on September 28, 2005, to revise the numbering of Section V.C to correct a redundant subsection. As of October 6, 2005, the motion has not been ruled upon. Under Staff's motion, this subsection would be V.C.6.

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1 Pursuant to Section 200.800 of the Illinois Commerce Commission’s  
2 (“Commission”) Rules of Practice (83 Ill. Admin. Code Sec. 200.800) and the schedule  
3 established by the Administrative Law Judge (“ALJ”), Peoples Energy Services  
4 Corporation (“PE Services”) files its Initial Brief in the above-captioned proceeding.

5 PE Services is an alternative retail electric supplier certified to serve customers in  
6 the Commonwealth Edison Company (“ComEd”) service territory. PE Services is a  
7 member of the Coalition of Energy Suppliers and is joining the initial brief filed by that  
8 Coalition, including the Coalition’s discussion of applicable law. PE Services’ Initial  
9 Brief is limited to one issue. For the reasons set forth below, PE Services respectfully  
10 requests that the Commission direct ComEd to revise the confidentiality guidelines in its  
11 Auction Manual.

12 **V.C.7: Association and Confidential Information Rules**

13 ComEd’s proposal included an Auction Manual that provides detailed information  
14 about the conduct of the auction process. ComEd Ex. 3.4; ComEd. Ex. 3.0 at 33-34.  
15 Section V of the Auction Manual, entitled Association and Confidential Information  
16 Rules, addresses issues surrounding confidentiality of data, but it leaves a troubling

17 loophole that could impair the competitive bidding process. In response to PE Services'  
18 witness Wayne Bollinger's testimony (PES Ex. 1.0 and PES Ex. 2.0), ComEd proposed  
19 modifications to this section. ComEd. Ex. 19.0 at 14-16. The modifications do not  
20 adequately close the loophole identified by Mr. Bollinger.

21 Section V.D specifically, and Section V generally, of the Auction Manual address  
22 confidentiality among bidders. ComEd Ex. 3.4. For example, Section V provides that a  
23 qualified bidder must certify that it "does not have any knowledge of confidential  
24 information that is relevant to the bidding strategy of any other qualified bidder." As a  
25 second example, "[a] qualified bidder must certify that it will not disclose confidential  
26 information relative to its own bidding strategy except to" certain identified parties. As a  
27 final example, a "qualified bidder must certify that it will not disclose any confidential  
28 information regarding to [sic] the Auction Process to any party except to its advisors and  
29 bidders with which it is associated." ComEd Ex 3.4, Sec. V.D.

30 PES is concerned about a bidder's relationship to entities with which Retail  
31 Electric Suppliers ("RES") compete, and the Auction Manual, even with ComEd's  
32 proposed modifications, does not adequately address that concern. PES Ex. 2.0 at 6.  
33 First, PE Services is concerned about a bidder sharing information with an unaffiliated,  
34 but "associated," RES. Second, PE Services is also concerned that the exception for  
35 "advisors" could be a substantial loophole. A bidder could legitimately consider an  
36 unaffiliated RES to be an advisor in the process, and, in this advisory capacity, the  
37 unaffiliated RES could gain valuable market intelligence, as well as share its own  
38 intelligence about the retail market with the bidder. PES Ex. 2.0 at 6-7.

39           To the first point, ComEd responded that PE Services ignored that the disclosure  
40 exceptions were limited to another bidder if the association with the bidder is disclosed.  
41 ComEd Ex. 19.0 at 13. As is clear from PE Services' example in its rebuttal testimony  
42 (PES Ex. 2.0 at 6), it understands the exception. Its concern remains. Having a non-  
43 RES bidder disclose information to a RES bidder can confer upon that RES critical  
44 market information that is unavailable to other RESs. PE Services is not opposed to  
45 RESs being able to bid. A RES should be free to participate as a bidder and develop its  
46 own market information, but it should not be privy to another bidder's confidential  
47 information even if the association is disclosed to the Auction Manager. PES Ex. 2.0 at  
48 8. There is no reason to even place the Auction Manager in the position of determining  
49 which exceptions it will or will not "tolerate" (ComEd Ex. 19.0 at 14). Such information  
50 sharing, and the attendant risk of undermining the integrity of the auction process and  
51 disadvantaging RESs who lack access to confidential information, should not be  
52 permitted in the auction process. To this end, PE Services proposed that a qualified  
53 bidder be required to "certify that it will not disclose any confidential information  
54 regarding the Auction Process to any company or any persons within a division(s) or  
55 business unit(s) of the bidder's company who is authorized to do business as a Retail  
56 Electric Supplier or an Alternative Retail Electric Suppliers in Illinois." PES Ex. 2.0 at 9.

57           To the second point, ComEd questioned PE Services' concerns, but it proposed  
58 modifications to the Auction Manual's definition of "advisor." The modifications are to  
59 define an "advisor" as a person (not an entity) and to state that the advisor cannot  
60 disclose confidential information to anyone but the bidder. ComEd Ex. 19.0 at 15-16.  
61 PE Services proposed solution to this problem was adding language stating that: "The

62 term “advisors” shall not include companies or divisions of companies that are  
63 authorized to do business as a Retail Electric Supplier or an Alternative Retail Electric  
64 Suppliers in Illinois.” PES Ex. 2.0 at 9. In light of ComEd’s proposed modification,  
65 offered in surrebuttal testimony to which PE Services was unable to respond with pre-  
66 filed testimony, PE Services proposes adding that an “advisor” also exclude any  
67 individual employed by companies or divisions of companies that are authorized to do  
68 business as a Retail Electric Supplier or an Alternative Retail Electric Suppliers in  
69 Illinois.

70 PE Services’ proposal addresses the difficulty of monitoring whether an  
71 individual, acting as a bidder’s advisor, is disclosing information to others in his  
72 company or division. It is this difficulty that prompts regulatory agencies to require  
73 functional or physical separation in the context of affiliate relationships or within a  
74 company performing generation and transmission services.<sup>1</sup> ComEd has proposed a  
75 sort of functional separation, but it lacks any effective enforcement mechanism. Here,  
76 rather than regulatory requirements embodied in rules, the guidelines would be an  
77 Auction Manual being administered by an Auction Manager. Excluding this limited  
78 universe of potential advisors from the equation is preferable to opening the door to  
79 anti-competitive information sharing. There is no evidence that excluding RESs and  
80 their employees from the advisor role will prevent any qualified bidder from participating  
81 in the auction. ComEd’s effort to address PE Services’ concerns is insufficient.  
82 Therefore, the Auction Manual should be revised to preclude RESs and their employees

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<sup>1</sup> See, e.g, 83 Ill. Admin. Code Parts 450, 452 and 550. Standards of Conduct for Transmission Providers, Order No. 2004, 105 FERC ¶61,248 (2003); Order No. 2004-A, 107 FERC ¶61,032 (2004); Order No. 2004-B, 108 FERC ¶61,118 (2004).

83 from being advisors to bidders and to require bidders to certify that they will not disclose  
84 information to RESs.

85 WHEREFORE, Peoples Energy Services Corporation respectfully submits this  
86 Initial Brief.

Respectfully submitted,

Peoples Energy Services Corporation

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Dated at Chicago, Illinois  
this 7th day of October, 2005.

## **NOTICE OF FILING AND CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Initial Brief of Peoples Energy Services Corporation has been filed on the Illinois Commerce Commission's e-docket system and served upon each person designated in the official service list by electronic mail or United States mail.

Dated at Chicago, Illinois, this 7th day of October, 2005.

By: /S/ MARY KLYASHEFF

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