

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

COMMONWEALTH EDISON COMPANY	)	
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	)	
Proposal to implement a competitive procurement	)	No. 05-0159
process by establishing Rider CPP, Rider	)	
PPO-MVM, Rider TS-CPP and revising Rider	)	
PPO-MI. (Tariffs filed February 25, 2005)	)	

**DRAFT ORDER OF  
PEOPLES ENERGY SERVICES CORPORATION**

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**By the Commission:**

**V. AUCTION DESIGN ISSUES**

**C. Multiple round descending clock format**

**7. Association and confidential information rules**

**ComEd's Proposal**

ComEd's auction proposal includes an Auction Manual that provides detailed information about the conduct of the auction process. (*See* ComEd Ex. 3.4; ComEd. Ex. 3.0 at lines 716-68.) Specifically, Section V of the Auction Manual, entitled "Association and Confidential Information Rules," addresses issues surrounding confidentiality of data. PES objects to certain provisions of the Auction Manual.

**PES's Position**

PES seeks two principal revisions to the confidentiality guidelines in ComEd's Auction Manual. Specifically, PES seeks revisions that: (1) require bidders to certify that they will not disclose information to Retail Electric Suppliers ("RESs"), which include Alternative Retail

Electric Suppliers (“ARES”) and utilities or divisions of utilities acting as ARES; and (2) preclude RESs and their employees from being advisors to bidders.

With respect to the first issue (requiring bidders to certify that they will not disclose information to RESs), PES points out that a bidder could legitimately consider an unaffiliated RES to be an associated bidder or advisor in the process, and, in either capacity, the unaffiliated RES could gain valuable market intelligence, as well as share its own intelligence about the retail market with the bidder. (*See id.*)

PES argues that allowing a non-RES bidder to disclose information to a RES can confer upon that RES critical market information that is unavailable to other RESs. (*See PES Ex. 2.0 at lines 171-78.*) According to PES, that problem exists regardless of whether the association between the non-RES and the RES is disclosed.

PES is not opposed to permitting RESs to bid. PES believes that a RES should be free to participate as a bidder and develop its own market information, but it should not be privy to another bidder’s confidential information even if the association between the two entities is disclosed to the Auction Manager. (*See PES Ex. 2.0 at lines 171-78.*)

Further, PES believes that the resolution of this problem should not be left to the discretion of the Auction Manager. Instead, PES believes that such information sharing, and the attendant risk of undermining the integrity of the auction process and disadvantaging RESs who lack access to similarly confidential information, explicitly should be prohibited. Accordingly, PES proposes that a qualified bidder be required to “certify that it will not disclose any confidential information regarding the Auction Process to any company or any persons within a division(s) or business unit(s) of the bidder’s company who is authorized to do business as a

Retail Electric Supplier or an Alternative Retail Electric Suppliers in Illinois.” (See PES Ex. 2.0 at 165-69.)

With respect to the second issue (precluding RESs and/or their employees from being advisors to bidders), PES suggests the following language be included in the Auction Manual: “The term ‘advisors’ shall not include companies or divisions of companies that are authorized to do business as a Retail Electric Supplier or an Alternative Retail Electric Suppliers in Illinois.” (See PES Ex. 2.0 at lines 162-64.) PES maintains, in response to proposed modifications suggested by ComEd in its surrebuttal testimony (i.e., to define an “advisor” as a person (not an entity) and to state that the advisor cannot disclose confidential information to anyone but the bidder (see ComEd Ex. 19.0 at lines 306-23) that the definition of “advisor” should also exclude any individual employed by companies or divisions of companies that are authorized to do business as a RES or an Alternate Retail Electric Supplier in Illinois.

### **ComEd’s Position**

With respect to the first issue (requiring bidders to certify that they will not disclose information to RESs), ComEd notes that the disclosure exceptions contained in the Auction Manual would require the bidder to disclose its association with an unaffiliated RES. (See ComEd Ex. 19.0 at lines 255-76.) ComEd also suggests that the decision should be left to the discretion of the Auction Manager. (ComEd Ex. 19.0 at line 285.)

With respect to the second issue (precluding RESs and/or their employees from being advisors to bidders), after initially questioning PES’s concerns, ComEd proposes that the Auction Manual’s definition of “advisor” be modified (1) to define an advisor as a person (not an entity); and (2) to state that the advisor cannot disclose confidential information to anyone but the bidder. (See ComEd Ex. 19.0 at lines 306-23).

### **Commission Analysis and Conclusion**

Regarding the first issue raised by PES (requiring bidders to certify that they will not disclose information to RESs), the Commission recognizes the danger of inappropriate sharing of market intelligence. As currently drafted, the Auction Manual would not adequately prevent a bidder in the auction from sharing confidential information with an “associated bidder” or with an “advisor,” even if the entity in the associated or advisory role were a RES (or RES employee) competing in the Illinois market. In response to the concerns that PES witness Wayne Bollinger expressed in his testimony, ComEd proposed modifications to the provisions of Section V. However, the proposed modifications do not adequately close the loophole identified by Mr. Bollinger.

The Commission agrees with PES that the resolution of this problem should not be left to the discretion of the Auction Manager, as suggested by ComEd. Inappropriate information sharing, and the attendant risk of undermining the integrity of the auction process and disadvantaging RESs who lack access to similarly confidential information, explicitly should be prohibited.

Accordingly, the Commission concludes that a qualified bidder shall be required to certify that it will not disclose any confidential information regarding the Auction Process to any company or any persons within a division(s) or business unit(s) of the bidder’s company who is authorized to do business as a Retail Electric Supplier or an Alternative Retail Electric Supplier in Illinois.

Regarding the second issue raised by PES (precluding RESs and/or their employees from being advisors to bidders), the Commission appreciates the difficulty of monitoring whether an individual, acting as a bidder’s advisor, is disclosing information to others in his company or

division. As PES persuasively points out, similar appreciation of this difficulty has prompted regulatory agencies to require functional or physical separation in the context of affiliate relationships or within a company performing generation and transmission services.<sup>1</sup> Although ComEd has proposed a sort of functional separation, it lacks any effective monitoring or enforcement mechanism. ComEd's proposed ethical standards would be provided only in the Auction Manual, to be administered by an Auction Manager, and would not be embodied in any Commission regulations. Given the importance of this issue to the integrity of the auction process, the Commission concludes that it is appropriate, in the instant proceeding, to limit the universe of potential advisors, so as to avoid potentially opening the door to anti-competitive behavior.

Accordingly, the Commission concludes that the term "advisors" shall not include companies or divisions of companies, or any employees thereof, that are authorized to do business as a Retail Electric Supplier or an Alternative Retail Electric Supplier in Illinois.

In summary, the Commission concludes: (1) that a qualified bidder shall be required to certify that it will not disclose any confidential information regarding the Auction Process to any company or any persons within a division(s) or business unit(s) of the bidder's company who is authorized to do business as a Retail Electric Supplier or an Alternative Retail Electric Supplier in Illinois; and (2) that the term "advisors" shall not include companies or divisions of companies, or any employees thereof, that are authorized to do business as a Retail Electric Supplier or an Alternative Retail Electric Supplier in Illinois.

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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).

## **FINDINGS AND ORDERING PARAGRAPHS**

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) Commonwealth Edison Company (ComEd) is an Illinois corporation engaged in the distribution and sale of electricity to the public in Illinois and is a public utility as defined in Section 3-105 of the Public Utilities Act;
- (2) ComEd should modify its proposed Auction Manual to provide that a qualified bidder shall be required to certify that it will not disclose any confidential information regarding the Auction Process to any company or any persons within a division(s) or business unit(s) of the bidder's company who is authorized to do business as a Retail Electric Supplier or an Alternative Retail Electric Suppliers in Illinois.
- (3) ComEd should modify its proposed definition of the term "advisors" in its proposed Auction Manual to provide that the term "advisors" shall not include companies or divisions of companies, or any employees thereof, that are authorized to do business as a Retail Electric Supplier or an Alternative Retail Electric Suppliers in Illinois.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the tariff sheets presently in effect rendered by Commonwealth Edison Company are hereby permanently canceled and annulled, effective at such time as the new tariff sheets approved herein become effective by virtue of this Order.

IT IS FURTHER ORDERED that the proposed tariffs, filed by Commonwealth Edison Company on February 28, 2005, are permanently canceled and annulled.

IT IS FURTHER ORDERED that Commonwealth Edison is authorized to file new tariff sheets in accordance with Findings (2) and (3) of this Order, applicable to service furnished on and after the effective date of said tariff sheets.

IT IS FURTHER ORDERED that any motions, petitions, objections, and other matters in this proceeding which remain unresolved are disposed of consistent with the conclusions herein.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

Respectfully submitted,

**PEOPLES ENERGY SERVICES CORPORATION**

By: /s/Christopher J. Townsend  
One of Their Attorneys

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