

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

COMMONWEALTH EDISON COMPANY	)	
	)	Docket 05-0188
Application of COMMONWEALTH EDISON	)	
COMPANY, for a Certificate of Public Convenience	)	
and Necessity, Pursuant to Section 8-406 of the	)	
Illinois Public Utilities Act, to construct, operate and	)	
maintain new 345,000 and 138,000 volt	)	
electric transmission lines in Cook County, Illinois.	)	

**BRIEF ON EXCEPTIONS OF THE STAFF OF  
THE ILLINOIS COMMERCE COMMISSION**

Pursuant to 83 Ill. Adm. Code 200.800, Staff of the Illinois Commerce Commission (“Staff”), by and through its attorney, hereby files its Brief on Exceptions to the Proposed Order (“PO”) filed by the Administrative Law Judge (“ALJ”) on November 16, 2005 in the above-captioned proceeding.

**I. EXCEPTIONS**

It is Staff’s position that significant revisions to the PO are warranted. Specifically, Staff recommends that the PO be revised to reflect Staff’s position that before issuing a Section 8-503 order, the Commission should satisfy itself that the utility cannot, with reasonable accommodation to landowners, construct its certified facilities without the need for eminent domain authority. As such, the Commission’s Order should direct ComEd, pursuant to Section 8-503, to construct the facilities identified in this case on the parcel of land identified in the record as the “Alvarez parcel”, and deny ComEd 8-503 authority for the remainder of its construction project.

Pursuant to Staff's position, a number of sections of the PO should be revised.

These include the following:

**The first paragraph on page 3 of the PO states:**

"The standard that must be met under Section 8-503 of the Act is that the project is necessary and ought reasonably to be constructed. ComEd points out that Commission Staff conceded that ComEd has met this statutory standard."

**Comment:** It appears that ALJ equates the Staff's concession that a showing of the need for the overall project has been met (which is Section 8-406 certification requirement) to meeting the Section 8-503 requirements. This is not Staff's position. Section 8-503 analysis is not strictly limited to the overall project. That is, Section 8-503 does not make eminent domain issue and all or nothing question to be applied to the entire project. As State has stated, ComEd has provided evidence supporting the need for eminent domain for one of the parcels of property, but has not provided such evidence for the remaining six parcels. Staff recommends that the Commission not grant blanket eminent domain authority when the record does not contain evidentiary support for such action.

Consistent with the Commission's Rules of Practice, Staff proposed edits and replacement language for the section discussed above is set forth in the attached mark-up of the PO (Attachment 1).

**The second paragraph on page 3 of the PO in part states:**

“Staff wants to impose conditions not articulated in Section 8-503 to limit the Order to parcels where there is essentially no reasonable alternative. ...”

**Comment:** Staff’s point is that ComEd has not shown that no reasonable alternatives exist for the six remaining parcels for which eminent domain authority is requested. Staff proposed a means for ComEd to show that these specific parcels are needed; ComEd failed to provide adequate information regarding the need. Absent evidence to show that six remaining parcels are necessary, Staff opposes granting eminent domain authority.

Consistent with the Commission’s Rules of Practice, Staff proposed edits and replacement language for the section discussed above is set forth in the attached mark-up of the PO (Attachment 1).

**The third paragraph on page 3 of the PO states in part:**

“ComEd responds that it cannot say the chosen route is the only route but it is the best, least cost route. It further asserts that it has negotiated in good faith with the property owners. ComEd argues that it is neither practical nor cost effective to issue a piecemeal order that might require it to seek additional Commission approval ...”

**Comment:** An alternative route or piecemeal authority would only be necessary if ComEd does not acquire all seven parcels in question. Staff’s position has been that eminent domain authority should be granted only if ComEd provides evidence to why

these specific parcels are needed. ComEd's reference to the difficulties it would have if it are not granted eminent domain authority is rather disingenuous given that any such difficulties would exist only as a result of the Company's unwillingness to provide any evidence for why the six parcels in question are necessary.

Consistent with the Commission's Rules of Practice, Staff proposed edits and replacement language for the section discussed above is set forth in the attached mark-up of the PO (Attachment 1).

**The fifth paragraph page 4 of the PO states in part:**

Staff argues that in addition to meeting the statutory standard of having demonstrated that the project is necessary and ought reasonably to be constructed before ComEd should be given eminent domain authority, it should prove ... (four conditions listed)"

**Comment:** Since ComEd was unable or unwilling to provide evidence as to why each of the remaining six parcels are necessary, Staff recommended in testimony (Staff Exhibit 1.0, lines 380-388) that ComEd provide evidence in their rebuttal testimony. To ensure that sufficient evidence to determine if the six parcels are necessary, Staff recommended that ComEd address, at a minimum, the four questions quoted in the Proposed Order. As stated previously, without any evidence to show that six remaining parcels are necessary, the Commission should not grant eminent domain authority for those parcels.

Consistent with the Commission's Rules of Practice, Staff proposed edits and replacement language for the section discussed above is set forth in the attached mark-up of the PO (Attachment 1).

## **II. CONCLUSION**

For the reasons set forth above, Staff of the Illinois Commerce Commission respectfully requests that the PO be revised as attached to reflect changes consistent with Staff's position.

Respectfully submitted,

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John J. Reichart

December 2, 2005