

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

COMMONWEALTH EDISON COMPANY	:	
	:	
Petition for approval of tariffs	:	No. 06-0411
Implementing ComEd's proposed	:	
residential rate stabilization program	:	

**THE PEOPLE OF THE STATE OF ILLINOIS' RESPONSE
TO COM ED'S MOTION FOR A PROTECTIVE ORDER**

The People of the State of Illinois (“the People”), by and through the Illinois Attorney General, Lisa Madigan, hereby respond, pursuant to 83 Ill. Admin. Code § 200.190(e), to Commonwealth Edison Company’s (“ComEd”) Motion for Entry of a Protective Order. The People propose modifications to the proposed protective order to: (i) specify procedures for resolving disputes over confidential designations; and (ii) to conform to the Attorney General Act, 15 ILCS 205/0.01 *et seq.*, which governs the Office of the Attorney General’s access to and use of confidential information in connection with Illinois Commerce Commission (“ICC” or “Commission”) proceedings.

I. ComEd’s Proposed Protective Order Omits Key Provisions Included in the Protective Orders Entered in Recent ComEd Rate Cases.

ComEd states that the proposed protective order in this case is “in essentially the same form” as the protective orders entered in, *inter alia*,

docket nos. 05-0159 and 05-0597. ComEd Motion, ¶ 6. That is not the case. In fact, the protective order that ComEd proposes for this docket is materially different from the protective orders entered in docket nos. 05-0159 and 05-0597.

There are two material differences in the proposed protective order and the previously entered orders that are of particular concern to the Office of the Attorney General. First, the protective order proposed in this docket fails to specify procedures for resolving disputes over confidential designations. Second, the proposed protective order fails to acknowledge that the Attorney General Act, 15 ILCS 205/0.01 *et seq.*, governs the Office of the Attorney General's access to and use of confidential information.

II. The Proposed Order Should be Modified to Specify Procedures for Resolving Disputes Over Confidential Designations.

The proposed protective order does not specify procedures for resolving disputes over confidential designations. To correct this problem ¶ 13 of the proposed order should be modified by adding the following language, which appeared in the protective orders entered in ICC docket nos. 05-0159 and 05-0597:

13. If any party does not agree with the Producing Party's designation of documents and information as "Confidential" or "Confidential & Proprietary", the party (the "Challenging Party") shall give the Producing Party reasonable written notice, by e-mail or by U.S. Mail, of the challenge. The Producing Party and Challenging Party shall attempt to negotiate a satisfactory resolution of the issue. If the Producing Party continues to believe that the Confidential Information contains information that justifies such designation, it shall so inform the Challenging Party,

in writing, within five (5) business days of receipt of the Challenging Party's objection.

If the Challenging Party continues to object to the confidential designation, it may file a written notice of objection with the Commission. This filing shall identify the documents or portions thereof that are the subject of the challenge, but need not provide reasons in support of the challenge inasmuch as the burden is on the Producing Party to justify the confidential designation. At that point, if the Producing Party wants to maintain the confidentiality of the information, it shall file a motion, within five business days of the written objection, requesting such relief. That motion shall provide in detail, for each document or type of document under challenge, the basis for seeking confidential treatment. An opportunity to file a response will be provided. A document marked "Confidential" or "Confidential & Proprietary" shall be treated as such by all parties, during the pendency of any challenge to such designation, until a ruling is issued removing such designation. In the event of a challenge to the confidentiality designation of the Producing Party, the Producing Party shall bear the burden to support its designation.

These additions to the protective order are necessary to ensure efficient resolution of disputes over confidentiality designations.

III. The Attorney General Act Governs Access to and Use of Confidential Material by the Office of the Attorney General

In 2005 the General Assembly amended the Attorney General Act to create a "Consumer Utilities Unit" which is within the Office of the Attorney General and invested with "investigative and enforcement powers" on matters relating to public utilities. 15 ILCS 205/6.5(a) and (d). This new section of the Attorney General Act specifically addresses the Office of the Attorney General's access to and use of confidential information in connection with ICC proceedings:

Upon request, the Office of the Attorney General shall have access to and the use of all files, records, data and documents in the possession or control of the Commission. The Office of

the Attorney General may use information obtained under this Section, including information that is designated as and that qualifies for confidential treatment, which information the Attorney General's office shall maintain as confidential, to be used for law enforcement purposes only, which information may be shared with other law enforcement officials.

15 ILCS 205/6.5(d).

A. The Proposed Protective Order Does Not Conform to the Attorney General Act.

The proposed protective order does not acknowledge that the Attorney General Act, rather than the protective order, governs the Office of the Attorney General's access to and use of confidential information in connection with ICC proceedings. This is somewhat surprising because the proposed protective order does contain a specific provision acknowledging that access to confidential information by Commission Staff is governed by statute and that the order is not applicable to Staff. Proposed Order, at ¶ 20. The protective orders entered in recent ComEd dockets, 05-0159 and 05-0160, also contain special exceptions for Staff, the Attorney General and the Cook County State's Attorney.

B. The Proposed Protective Order Should be Modified to Conform to the Attorney General Act

The proposed protective order should be modified to conform with the Attorney General Act. The following language should be inserted after ¶ 20 of the proposed order:

The Attorney General Act, 15 ILCS 205/0.01 *et seq*, governs access to and use of confidential information by the Office of the Attorney General ("OAG"). The OAG is not subject to this Order except that: (i) the OAG shall disclose "Confidential" or "Confidential & Proprietary" information to independent experts retained by the

OAG in connection with this proceeding in accordance with the terms and provisions of this Order; and (2) all pleadings by and testimony on behalf of the OAG shall be filed and distributed in accordance with the terms and provisions of this Order. The terms of this Order shall in no way interfere with the OAG's obligation to carry out law enforcement functions and the Attorney General Act shall control over any contrary provisions in this Order.

This modification to the proposed protective order is necessary to ensure that the order conforms with the Attorney General Act and does not interfere with the Office of the Attorney General's investigative and law enforcement authority.

In addition, ¶ 4 should be revised as follows to reflect the fact that the Office of the Attorney General is not subject to the proposed protective order:

4. Subject to rights to challenge Confidential and Confidential & Proprietary designations made by a Producing Party described herein, no information or document that is produced and designated as Confidential nor any information contained therein or obtained therefrom, shall be delivered, exhibited or disclosed to any person (other than Commission officers and employees, who are not subject to this Order, but who are governed by 220 ILCS 5/4-404 and 5/5-108; and the Office of the Attorney General, which is not subject to this Order, but which is governed by 15 ILCS 205/6.5(a) - (d)) who has not read this Order, signed Form 1, attached hereto, and delivered Form 1 to the Producing Party.

Failure to amend the proposed protective order in the manner described above will result in inefficiencies. If the proposed order is not modified, the Office of the Attorney General would have to request documents from Commission Staff in order to review confidential documents pursuant to the independent statutory authority established

in the 2005 Amendments to the Attorney General Act. The Office of the Attorney General does not wish to burden Staff in this manner, but has thus far been unable to convince ComEd to modify the proposed order as requested in this filing.

CONCLUSION

Based on the foregoing, the People respectfully request modification of the proposed protective order as described herein, to specify procedures for resolving disputes over confidential designations and to conform to the Attorney General Act, 15 ILCS 205/0.01 *et seq.*

Respectfully Submitted,
The People of the State of Illinois

By LISA MADIGAN, Attorney General

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July 25, 2006

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company)	
)	
)	
Petition for approval of tariffs implementing)	06-0411
ComEd's proposed residential rate stabilization)	
program)	
)	

NOTICE OF FILING

PLEASE TAKE NOTICE that on July 25, 2006 we submitted a Response to ComEd's Motion for a Protective Order on behalf of the People of the State of Illinois for filing in the above-captioned proceeding via e-Docket with the Chief Clerk of the Illinois Commerce Commission at 527 E. Capitol Avenue, Springfield, Illinois 62701.

Susan Hedman
Senior Assistant Attorney General

CERTIFICATE OF SERVICE

I, Susan Hedman, hereby certify that the foregoing documents, together with this Notice of Filing and Certificate of Service, were sent to all parties of record listed on the attached service list by e-mail on July 25, 2006. Paper copies will be provided upon request.

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