

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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**Lt. Governor Pat Quinn**

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**Petition for an Emergency Investigation  
of ComEd's Relationship to CORE and  
Advertising Misleading Information**

**Docket No. 06-0686**

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

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January 5, 2007

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Now comes the Staff of the Illinois Commerce Commission ("Staff"), by and through its undersigned attorneys, and pursuant to Section 200.830 of the Rules of Practice of the Illinois Commerce Commission ("Commission"), 83 Ill. Adm. Code Section 200.830, respectfully submits this Brief on Exceptions to the Administrative Law Judge's ("ALJ") Proposed Order issued on December 15, 2006 ("Proposed Order" or "PO").

**I. INTRODUCTION**

On October 20, 2006, Lt. Governor Pat Quinn filed a Petition for an Emergency Investigation of ComEd's Relationship to CORE and Advertising Misleading Information ("Petition"). Commonwealth Edison Company ("ComEd" or the "Company") filed a Motion to Dismiss the Petition on November 8, 2006 ("Motion to Dismiss"). A briefing schedule for ComEd's Motion to Dismiss was established by the ALJ on November 9, 2006. (Tr., pp. 8-9) The Proposed Order was issued on December 15, 2006. The

Proposed Order focuses extensively on the Petition's request to investigate the appropriateness of certain speech and associations, and related concerns regarding freedom of speech and freedom of association. Staff has taken no position at this time regarding the various speech and association issues. (see, Response of Staff of the Illinois Commerce Commission to Commonwealth Edison Company's Motion to Dismiss the Petition and Lt. Governor Pat Quinn's Response to the Respondent's Motion to Dismiss dated November 21, 2006) Therefore, Staff does not offer any exception to those portions of the Proposed Order. However, the language in the Proposed Order directing Staff to conduct an investigation is general in nature, and consequently raises some questions regarding the specific intent of that language. Thus, if the Commission adopts the conclusions and findings contained in the Proposed Order, Staff offers exceptions to clarify certain issues with respect to the proposed Staff investigation.

## **II. CLARIFICATION OF THE NATURE OF STAFF'S INVESTIGATION**

The PO directs Staff to initiate an investigation into ComEd's financial support of CORE and its alleged sponsorship of CORE advertisements. (PO, pp. 19-20) The PO further states that based "[o]n of the results of this investigation, the Commission may take further action concerning the request that we impose disclosure requirements on ComEd for CORE ads sponsored by ComEd with an underlying commercial purpose." (*Id.*) While Staff can certainly use its own judgment regarding how to best conduct such an investigation, any additional instructions or details regarding the nature, scope or means by which Staff should conduct this investigation would be beneficial to Staff and all parties. Staff's understands the Proposed Order to direct Staff to gather facts with

respect to ComEd's financial support of CORE and its alleged sponsorship of CORE advertisements so that the Commission can make its own conclusions.

While Staff does not take exception to the PO's conclusion that Staff conduct an investigation, Staff recommends language clarifying that Staff's investigation is to focus on gathering relevant facts. If the Commission intends Staff's investigation to proceed beyond gathering factual information (e.g., to draw conclusions from the facts regarding whether certain ads or actions were misleading as alleged in the Petition), then that intent should also be specified in the Commission's order. The Proposed Order implies that the Commission, rather than Staff, will perform that role. Thus, at a minimum, Staff recommends the following clarifying language:

**Recommended Language** (Proposed Order, page 19)

\* \* \*

In summary, we conclude that the Commission has the authority to investigate ComEd's financial support of CORE and its alleged sponsorship of CORE advertisements. Furthermore, the facts alleged in the petition suggest such an investigation is warranted. In a Staff Report, Staff is to summarize its investigation of the facts and circumstances of ComEd's financial support of CORE and its alleged sponsorship of CORE's advertisements to present to the Commission. ...

**III. CONTINUATION OR CONCLUSION OF THIS PROCEEDING**

The PO concludes that:

... the Commission has the authority to investigate ComEd's financial support of CORE and its alleged sponsorship of CORE advertisements. Furthermore, the facts alleged in the petition suggest such an investigation is warranted. On the basis of the results of this investigation, the Commission may take further action concerning the request that we impose disclosure requirements on ComEd for CORE ads sponsored by

ComEd with an underlying commercial purpose. Therefore, ComEd's Motion to Dismiss is denied as to this aspect of the Petition.

(PO, p. 19) While, as noted above, Staff does not take exception to the PO's underlying position that (1) Staff should investigate "ComEd's financial support of CORE and its alleged sponsorship of CORE advertisements" and (2) "the Commission may take further action concerning the request that we impose disclosure requirements on ComEd for CORE ads sponsored by ComEd with an underlying commercial purpose", the PO is not clear as to the procedural posture of Staff's investigation or the manner in which the results of that Staff investigation are to be provided to the Commission.

The Proposed Order does not indicate whether it is an interim order or a final order. Thus, it is not clear to Staff if its investigation is to occur (i) as part of the instant docket or (ii) outside of this docket. Since the Proposed Order directs Staff to conduct the investigation, it may be contemplated that Staff would independently investigate these matters outside of this or any other docket. On the other hand, the intent may be that Staff would investigate these matters in this docket or another docket. It is also possible the Proposed Order intended for the investigation to occur outside of this or any other docket, with a Staff Report of the investigation to serve as the basis for commencing a new proceeding as the Commission's determines. Although docketed proceedings provide readily available procedural tools to discover facts, Staff has no particular preference regarding where the investigation occurs. Staff's main concern is that the Commission's intent in this regard be made clear.

Staff can envision two alternatives for the results of Staff's investigation to be presented to the Commission for its consideration for further action. One alternative is for Staff to present the results of its investigation to the Commission through a Staff

Report outside of this proceeding assuming that the PO intended this docket to be concluded by entry of the order directing Staff to conduct an investigation. If this proceeding is to be concluded by the entry of an order directing Staff to conduct an investigation, the Commission would be free to review the Staff Report and determine whether it was necessary to initiate a new proceeding to address the results of Staff's investigation.

A second alternative is if the PO did not intend for this docket to be concluded by entry of the order directing Staff to conduct an investigation, then the results of Staff's investigation could be presented in a Staff Report and said Staff Report could become part of the record in this proceeding. The parties to this proceeding would be free to contest the validity and correctness of the Staff Report, but should not be able to object to the Staff Report becoming part of the evidentiary record in this proceeding.

Staff can support either alternative and as indicated above Staff does not take exception to the PO's conclusion that an investigation of ComEd's financial support of CORE and its alleged sponsorship of CORE advertisements needs to occur. Based upon the discussion above, Staff recommends that the PO be amended as follows (Staff has also incorporated its Recommended Language from Section II of this Brief on Exceptions):

**Recommended Language** (Proposed Order, pages 19 and 20)

Alternative 1

\* \* \*

In summary, we conclude that the Commission has the authority to investigate ComEd's financial support of CORE and its alleged sponsorship of CORE advertisements. Furthermore, the facts alleged in

the petition suggest such an investigation is warranted. In a Staff Report, Staff is to summarize its investigation of the facts and circumstances of ComEd's financial support of CORE and its alleged sponsorship of CORE's advertisements to present to the Commission. Staff shall submit the results of its investigation to the Commission. Upon review of the Staff Report the Commission will make a determination as to whether to initiate a proceeding to address the results of the Staff Report. ~~On the basis of the results of this investigation, the~~ The Commission may take further action concerning the request that we impose disclosure requirements on ComEd for CORE ads sponsored by ComEd with an underlying commercial purpose. Therefore, ComEd's Motion to Dismiss is denied as to this aspect of the Petition.

### **Findings and Ordering Paragraphs**

\* \* \*

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Motion to Dismiss filed by Commonwealth Edison to dismiss the Petition for an Investigation filed by the Lieutenant Governor is granted in part and denied in part as stated above.

IT IS FURTHER ORDERED that Commission Staff is directed to investigate the relationship between Commonwealth Edison and CORE.

IT IS FURTHER ORDERED that Staff shall submit the results of its investigation to the Commission in a Staff Report. Upon review of the Staff Report the Commission will make a determination as to whether to initiate a proceeding to address the results of the Staff Report.

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, its is not subject to the Administrative Review Law.

### **Alternative 2**

\* \* \*

In summary, we conclude that the Commission has the authority to investigate ComEd's financial support of CORE and its alleged sponsorship of CORE advertisements. Furthermore, the facts alleged in the petition suggest such an investigation is warranted. In a Staff Report, Staff is to summarize its investigation of the facts and circumstances of ComEd's financial support of CORE and its alleged sponsorship of CORE's advertisements to present to the Commission. Staff shall submit the results of its investigation to the Commission which will be made part

of the record in this proceeding. The parties would be free to contest the validity and correctness of the Staff Report, but would not be able to object to the Staff Report becoming part of the evidentiary record in this proceeding. On the basis of the results of this investigation, the Commission may take further action concerning the request that we impose disclosure requirements on ComEd for CORE ads sponsored by ComEd with an underlying commercial purpose. Therefore, ComEd's Motion to Dismiss is denied as to this aspect of the Petition.

**Findings and Ordering Paragraphs**

\* \* \*

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Motion to Dismiss filed by Commonwealth Edison to dismiss the Petition for an Investigation filed by the Lieutenant Governor is granted in part and denied in part as stated above.

IT IS FURTHER ORDERED that Commission Staff is directed to investigate the relationship between Commonwealth Edison and CORE.

IT IS FURTHER ORDERED that Staff shall submit the results of its investigation to the Commission in a Staff Report which will be made part of the record in this proceeding. The parties would be free to contest the validity and correctness of the Staff Report, but would not be able to object to the Staff Report becoming part of the evidentiary record in this proceeding.

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 not final and, its is not subject to the Administrative Review Law.

#### IV. CONCLUSION

Wherefore, Staff respectfully requests that the Illinois Commerce Commission approve Staff's recommendations in this docket.

Respectfully submitted,

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January 5, 2007

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