

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

ILLINOIS COMMERCE COMMISSION :  
On Its Own Motion :  
 :  
 :  
Investigation of Rider CPP of Commonwealth :  
Edison Company, and Rider MV of Central Illinois :  
Light Company d/b/a AmerenCILCO, of : No. 06-0800  
Central Illinois Public Service Company d/b/a :  
AmerenCIPS, and of Illinois Power Company d/b/a :  
AmerenIP , pursuant to Commission Orders :  
regarding the Illinois Auction. :

**COMMONWEALTH EDISON COMPANY’S**  
**MOTION FOR ENTRY OF A PROTECTIVE ORDER**

Commonwealth Edison Company (“ComEd” or the “Company”), by its attorneys, respectfully moves the Administrative Law Judge, pursuant to Section 4-404 of the Public Utilities Act (the “Act”), 220 ILCS 5/4-404, and Sections 200.190 and 200.430 of the Rules of Practice of the Illinois Commerce Commission (the “Commission”), 83 Ill. Adm. Code §§ 200.190, 200.430, for entry of a protective order to govern the treatment of certain confidential and confidential and proprietary information and materials. In support of this motion, ComEd states:

1. On December 20, 1996, the Commission entered an order initiating this proceeding to review the Illinois Auction process as a result of findings it made in orders entered in Docket No. 06-0800 and in Docket Nos. 05-0160, 05-0161, and 05-0162 (Consolidated) on January 24, 2006.
2. During this proceeding, ComEd anticipates that parties likely will seek to review ComEd information and materials confidential or confidential and proprietary to ComEd, bidders that participated in the recent procurement auction, or other third parties. ComEd also anticipates that other parties in this proceeding may have similar materials of their own relevant to this proceeding.
3. ComEd seeks to disclose to the parties, requested information and materials that, while relevant and not privileged, ComEd considers confidential or confidential and proprietary, without waiving the status of those items. Through entry of the draft proposed protective order in the form attached as Exhibit “A” (the “Protective Order”), ComEd requests adequate protection for such information and materials.

4. Section 4-404 of the Act states: “The Commission shall provide adequate protection for confidential and proprietary information furnished, delivered or filed by any person, corporation or other entity.” 220 ILCS 5/4-404.
5. Section 200.430 of the Commission’s Rules of Practice authorizes the Commission and its Administrative Law Judges to enter protective orders “to protect the confidential, proprietary or trade secret nature of any data, information or studies.” 83 Ill. Adm. Code § 200.430(a).
6. In ComEd’s most recent two rate cases and its procurement case that approved the auction which is the subject of this docket, the Administrative Law Judges entered protective orders that mirror the form as Exhibit A, with certain limited modifications. (*See* ICC Docket Nos. 01-0423, and 06-0800, 05-0597.)
7. ComEd also seeks appropriate procedures for filing confidential and confidential and proprietary materials according to the Commission’s rules concerning electronic filing. 83 Ill. Adm. Code § 200.1000, *et seq.* ComEd proposes that parties file only the “public redacted version[s]” of such documents (that must be filed pursuant to 83 Ill. Adm. Code § 200.430 (d)). Parties should file unredacted versions of such documents in hard copy. ComEd proposes that these materials not be posted electronically on the Commission’s e-docket. These procedures are reasonable, necessary and appropriate given the sensitive and proprietary business and customer information that likely will be sought in this proceeding.

**WHEREFORE**, for all of the reasons set forth above, Commonwealth Edison Company respectfully moves the Administrative Law Judge(s) for entry of the protective order attached to this motion as Exhibit A.

Dated: March 12, 2007.

Respectfully submitted,

By:   
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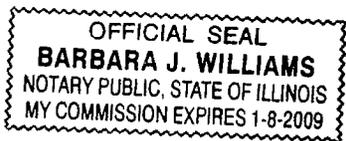
STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

**VERIFICATION**

I, Cynthia A. Fonner, being first duly sworn upon oath, states that she is one of the attorneys for Commonwealth Edison Company, an Illinois corporation; that she is authorized to make this affidavit; and that she has read the foregoing Commonwealth Edison Company's Motion for Entry of a Protective Order, that she is familiar with the facts and matters set forth therein, and that the same are true and correct to the best of her information and belief.



Subscribed and Sworn to  
Before me this 12th day  
of March, 2007.

  
Notary Public  
My Commission Expires: 1-8-2009

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**ORDER REGARDING PROTECTION OF  
CONFIDENTIAL AND CONFIDENTIAL & PROPRIETARY INFORMATION**

In the course of this proceeding, the parties and their attorneys may receive certain confidential or confidential & proprietary information by way of documents, testimony, answers to discovery requests, through informal discussions or through another method of recording or transmitting information, including but not limited to any electronic, e-mail, or other computer-related communication. To protect against the unregulated use of such information and to facilitate disclosure in this case, it is hereby ordered, pursuant to Section 220 ILCS 5/4-404, 5-108, and Section 200.430 of Title 83 of the Illinois Administrative Code, 83 Ill. Adm. §200.430, as follows:

**Process for Designation of Information**

1. Where any Party believes in good faith that a specific document that it will produce contains information that is entitled to protection as confidential or confidential & proprietary under the law, that Party ("Producing Party") shall identify such information by marking such information "Confidential" or "Confidential & Proprietary", signifying that the Producing Party has in good faith made a legal and factual determination that the information is as described. The Producing Party shall visually distinguish such information from other information appearing in the same document.

Where any Producing Party believes in good faith that specific information it will convey orally includes information that is entitled to protected treatment under the law, that Producing Party shall identify such information by stating that it is "Confidential" or "Confidential & Proprietary", signifying that the Producing Party has made a legal and factual determination that Confidential information will be, or has been, conveyed. The Producing Party shall also provide written confirmation within three business days of such communication to all

recipients that "Confidential" or "Confidential & Proprietary" information was conveyed. The written confirmation need only generally indicate that "Confidential" and/or "Confidential & Proprietary" information was provided without repeating the substance of the communication.

Each specific document so marked or specific information so identified will be referred to hereafter as "Confidential Information." Information so designated shall be afforded all protections given to Confidential and Confidential & Proprietary Information set forth in paragraphs 4 through 20 below, as applicable, unless and until a contrary ruling is made by the Administrative Law Judge(s) or the Commission. Procedures relating to challenges to "Confidential" or "Confidential and Proprietary" designations are set forth below.

2. "Confidential" as used herein is non-public information maintained by a party in confidence in the ordinary course of business and in which such party has asserted a business interest in maintaining in confidence. It also includes such other categories of documents and information as are recognized as confidential under applicable law or by order of the Administrative Law Judges or the Commission in this docket.

3. "Confidential & Proprietary" as used herein includes those materials concerning critical infrastructure the disclosure of which, in the judgment of the Producing Party, could adversely affect public safety and/or security; private personnel information, except for executive compensation already disclosed in SEC filings; and high level business information such as financial information that might be material under securities laws or documents that reflect the strategic thinking of the Producing Party on competitive issues applying to 2006 and beyond, market data, trade secrets and customer-specific information.

### **Confidential Information**

4. Subject to rights to challenge Confidential and Confidential & Proprietary designations made by a Producing Party described herein, neither information 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 Illinois Commerce Commission (the "Commission") officers and employees and retained experts (i.e., independent experts hired by the Commission), who are not subject to this order, but are governed by 220 ILCS 5/4-404 and 5/5-108) who has not read this order, signed Form 1, attached hereto, and delivered Form 1 to the Producing Party.

5. Persons who comply with Paragraph 4 above shall use or disclose the Confidential information only in preparation for and conduct of this proceeding, and then solely as provided in this order, and shall take all reasonable precautions to keep the Confidential information secure in accordance with the purposes and intent of this order. This includes appropriate precautions to prevent the unauthorized transfer of information in any type of electronic format. All Confidential information produced or exchanged in the course of this proceeding shall be used solely for the purpose of this proceeding or any appeal arising therefrom. Consistent with Paragraph 20 below and Paragraph 4 above, this paragraph is not applicable to the Commission Staff (including Commission officers and employees).

6. Parties may make Confidential information available only to those who need access to the information to prepare for this proceeding and who have executed the attached Form 1 as provided in Paragraph 4 above. Parties shall not make more than three copies of any Confidential information unless the Producing Party otherwise agrees in writing. This includes the dissemination of information in an electronic format including, but not limited to, e-mail transmission. The Producing Party, at its election, may provide three copies, in which event additional copies shall not be made unless the Producing Party otherwise agrees in writing. This includes the electronic scanning of documents or dissemination of electronic documents via e-mail or by other means of electronic sharing, such as placing electronic documents on a shared access network. Consistent with Paragraph 20 below and Paragraph 4 above, this paragraph is not applicable to the Commission Staff (including Commission officers, employees and retained experts).

7. If a party inadvertently produces information not marked "Confidential" or "Confidential and Proprietary" and the Producing Party subsequently notifies the recipient (and confirms in writing) that such information is Confidential or Confidential and Proprietary, the receiving party will treat such information in accordance with the provisions of this Order and will use its best efforts to recall or retrieve any such information that has been distributed not in accordance with this Order.

8. In the event that any party seeks to use or uses any Confidential information in testimony, exhibits, discovery responses, cross-examination, briefs or other documents to be filed in this case, the following shall apply:

- a) The testimony, exhibits, discovery responses, cross-examination, briefs or other documents containing Confidential information shall be sealed and served only on the Commission and the attorneys for the parties granted access to the Confidential information pursuant to this order. This includes, but is not limited to, the service of documents in electronic formats (such attorneys may distribute Confidential information so received as provided herein);
- b) the pages containing Confidential information shall be clearly marked and the cover of the testimony or other documents shall indicate that Confidential information is contained within the document inside. In the case of electronic data or documents, such designation shall be made by indicating that the CD-ROM, disk, or other media containing electronic data contains confidential information;
- c) the Commission shall treat all submissions containing Confidential information as Confidential and shall segregate Confidential information in its files and on its electronic network and databases. Confidential information, as discussed below, shall not be posted publicly on the Commission's electronic filing system maintained pursuant to 83 III. Adm. Code 200.1000, et seq., provided that, where appropriate, Confidential information may be filed as a proprietary electronic document through the Commission's electronic filing system consistent with said

rules and 83 Ill. Adm. Code 200.430 such that no person outside of the Commission is allowed to see or access the proprietary electronic documents as stated in 83 Ill. Adm. Code 200.1050(b). All documents containing Confidential information filed with the Commission shall be withheld from inspection by any person not granted access to Confidential information pursuant to this order, including by electronic means;

- d) all Confidential information shall be redacted from the copies of such testimony, exhibits, discovery responses, briefs or other documents including electronic documents and e-mail that may be provided to individuals and their attorneys who are not granted access pursuant to this Order;
- e) except as provided in subsection (c), above, documents containing Confidential information shall not be filed by electronic means as permitted by 83 Ill. Adm. Code 200.1000, et seq. However, when a party seeks to file a document containing Confidential information, it may file the "public redacted version" of such document (as is required by 83 Ill. Adm. Code 200.430(d)) with the Commission electronically. The filing of such a document will be deemed complete upon the filing of the public, redacted version of the document. The unredacted version of the document that contains Confidential information shall then be filed with the Commission as a proprietary electronic document pursuant to paragraph (c) above or by non-electronic means subject to the procedures set forth in this order; and
- f) each Producing Party will maintain a list of all persons granted access to Confidential information pursuant to this order, and will make that list available to other parties upon request. This obligation shall not apply to the Cook County State's Attorney's Office in the event that such office determines that Confidential information is necessary for use in an enforcement action.

9. Cross-examination involving Confidential information shall be conducted during in-camera hearings that will be closed to all those who are not allowed access to the Confidential information under this order. The transcript of such hearings shall be treated as confidential.

10. If at any time another court, administrative agency, person, or entity subpoenas, requests or orders production of Confidential information or documents containing the same, the party receiving the subpoena, request, or order shall promptly notify the Producing Party of that fact and provide the Producing Party with an opportunity to seek appropriate remedies in order to adequately protect the release of any Confidential Information.

11. The period of time for which documents will remain protected after the entry of a final order in this proceeding is addressed below and may be further addressed in subsequent rulings.

12. All persons possessing Confidential information or copies of documents containing Confidential information (including but not limited to testimony, exhibits, transcripts, discovery, responses, briefs, e-mails, disks) shall, within 15 days after receiving a written, oral, or electronic request from the Producing Party and after the Commission order becomes final and no longer subject to appeal, return all those materials to the Producing Party or shall destroy the materials and certify in writing to the Producing Party that such materials have been destroyed. However, counsel for a Party may retain one copy of any such notes, memoranda, working papers or other records containing information obtained or derived from any such Confidential information ("Retained Information"), for file record purposes. Counsel shall continue to abide by the obligations of this order regarding such Retained Information.

Persons receiving Confidential information shall also destroy all notes, working papers, e-mail, disks and computer or other network memories and other documents containing Confidential information and shall certify in writing to the Producing Party that such notes, working papers, documents and electronic records have been so destroyed within 15 days after receiving a written, oral, or electronic request from the Producing Party to do the same. However, a Party need not affirmatively take steps to destroy information that is automatically stored in back-up electronic systems as long as such information is not otherwise retrieved by such Party. This Order shall remain in effect for a period of five years from its date of entry, unless such period shall be extended at some future time pursuant to applicable Commission rules. Consistent with Paragraph 20 below and Paragraph 4 above, this paragraph is not applicable to the Commission Staff (including Commission officers and employees).

### **Challenges to Confidential Designations; Resolution of Disputes**

13. If a 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 designation is appropriate, it shall so inform the Challenging Party within five (5) business days of receipt of the Challenging Party's objection and shall provide the legal and factual basis for such designation. At such time, the Challenging Party should raise the matter with the Administrative Law Judge in the form of a motion or other appropriate pleading. 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 the ALJ issues a ruling altering such designation. In response to a motion or other appropriate pleading challenging the confidentiality designation of the Producing Party, the Producing Party shall bear the burden to support its designation.

### **Confidential and Proprietary Information**

14. All Confidential and Proprietary information shall be subject to and receive all of the protections accorded to Confidential information by Paragraphs 1-13 above, and shall be subject to and receive the additional protections of this and the following paragraphs.

15. If the Producing Party reasonably believes that the sensitivity or potential consequences of the dissemination of certain information is such that additional protections should be provided, or that no disclosure should be made to one or more of the parties and/or their third party experts, the Producing Party shall designate such information "Confidential & Proprietary."

16. Outside attorneys and experts will have access to Confidential & Proprietary information only after they have executed and delivered Form 2 attached to this order in favor of the Producing Party. An in-house attorney and one in-house expert will have access to the Producing Party's Confidential & Proprietary information after he/she executes and delivers Form 3 attached to this order in favor of the Producing Party. Before producing any Confidential & Proprietary information, the Producing Party may make reasonable inquiry, by way of discovery requests or otherwise, into the facts required to establish the certifications necessary under this paragraph.

17. As to each Party, Confidential & Proprietary information shall be disclosed only to (a) outside counsel of record in this proceeding, one in-house expert and up to three in-house attorneys, unless agreed to in writing by the Producing Party, and (b) an expert or consultant retained in this proceeding by such party. Confidential & Proprietary information shall not be disclosed to any other employee, consultant, or agent, or any officer or director of such party, or to any other individual or entity not granted access as a result of this order, absent a finding by the Administrative Law Judge pursuant to Paragraph 13 above that such information is not properly designated as Confidential & Proprietary. This Paragraph is also without prejudice to the Producing Party's right to make objections as provided in Paragraph 18 below.

18. This order does not affect any party's right to make objections as to the relevancy, materiality, or admissibility of any information requested, furnished, or received as a result of this order. If the Producing Party reasonably believes that the sensitivity of the requested information is such that additional protections should be implemented or that no disclosure should be made to one or more of the parties and/or their third party experts, the Producing Party may file a motion, within three working days after the request at issue, seeking additional protections.

19. The Producing Party will maintain a list of all persons granted access to Confidential & Proprietary information in this proceeding, and will make that list available to the parties upon request.

**Applicability of Order to Staff, Office of the Attorney General, and Cook County State's Attorney's Office**

20. Commission Staff personnel are governed by Section 220 ILCS 5/4-404, 5-108 regarding the disclosure of confidential information or documents and are not subject to this order except that (i) Staff shall be allowed to disclose "Confidential" or "Confidential & Proprietary" information in accordance with the terms and provisions of this order and (ii) all pleadings or testimony by Staff shall be filed and distributed in accordance with the terms and

provisions of this order.

The Office of the Attorney General is governed by 15 ILCS 205/6.5(a)-(d) and will receive information in this proceeding on behalf of the People of the State of Illinois. The Office of the Attorney General shall treat Confidential and Confidential & Proprietary information in accordance with the terms of this order and shall file and distribute pleadings or testimony in accordance with the terms of this order.

The Cook County State's Attorney's Office is also governed by Section 815 ILCS 505/10d(b) and those provisions shall control over any contrary provision in this order. The terms of this order shall not prohibit the Cook County State's Attorney's office from carrying out its law enforcement obligations. If the Cook County State's Attorney's Office determines that it must use Confidential or Confidential & Proprietary information obtained during the course of this proceeding for an independent law enforcement purpose, it will do so in compliance with the terms of this order (excluding the use limitation) unless a court or state administrative agency rules otherwise.

### **Objections to Discovery on Other Grounds**

21. This Order is not intended to describe all materials to which a party may make an objection to production, and nothing in this order shall prevent a party from objecting to discovery requests pursuant to the Commission's Rules of Practice or, to the extent applicable, the Illinois Code of Civil Procedure, the Rules of the Supreme Court, or other law, including the relevancy, materiality, or admissibility of any information requested. Likewise, nothing in this order prevents any party from seeking review of any designation made by a Producing Party pursuant hereto.

### **Remedies**

22. Each Party agrees that any violation of this Agreement by unauthorized disclosure of any Confidential or Confidential & Proprietary information may result in liability for damages and penalties as provided by law and that the Producing Party shall have the right immediately to pursue all legal and equitable remedies, including specific performance of the terms of this Agreement and compensatory damages for breach, provided that a showing that the information so disclosed is not entitled to Confidential or Confidential & Proprietary treatment under the law, is a defense against any and all claims under this Agreement.

Designations that are not made in good faith, including, but not limited to blanket designations made without consideration of the nature of the specific information being designated, shall constitute a violation of this Agreement and may result in liability for damages.

**Other Considerations**

All procedures and requirements in 83 III. Adm. Code 200.430 and 83 III. Adm. Code 200.605 remain fully applicable in this proceeding.

Further protective orders or rulings may be issued, as needed.

Dated this \_\_\_\_\_ day of March, 2007.

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Administrative Law Judge

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

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AmerenIP , pursuant to Commission Orders :  
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CERTIFICATION FOR PRODUCTION OF CONFIDENTIAL INFORMATION

(FORM 1)

I, \_\_\_\_\_, certify that I am a(n) attorney/consultant/employee (circle one) for \_\_\_\_\_, a party to this proceeding, ICC Docket No. 06-0800, and that I request access to Confidential information, as defined in the attached Proposed Order Regarding Protection of Confidential and Confidential & Proprietary Information (the "Order"), that the Producing Party will produce. I have read the Order and agree to abide by all of its terms, unless such terms are altered by the Administrative Law Judge ("ALJ"), at which time the undersigned agrees to be bound by the terms of the Order, as altered and entered by the ALJ. By signing below, the undersigned is not waiving his/her right to object to or suggest modifications to the Order. I further certify that the Confidential information (as defined in the Order) will be used solely for the purposes stated in, and as set forth in, the Order.

SIGNED: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Employer: \_\_\_\_\_

Employer's Address: \_\_\_\_\_

Party Representing: \_\_\_\_\_

Subscribed and sworn to before me

this \_\_\_\_ day of \_\_\_\_\_, 2007.

My commission expires on \_\_\_\_\_.

Seal:

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

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CERTIFICATION BY OUTSIDE COUNSEL AND EXPERTS FOR PRODUCTION  
OF CONFIDENTIAL AND PROPRIETARY INFORMATION

(FORM 2)

I, \_\_\_\_\_, certify that I am  
a(n) attorney/expert/consultant (circle one) for \_\_\_\_\_, a party to  
this proceeding, ICC Docket No. 06-0800, and that I request access to Confidential &  
Proprietary information, as defined in the attached Proposed Order Regarding Protection of  
Confidential and Confidential & Proprietary Information (the "Order"), that the Producing Party  
will produce. I have read the Order and agree to abide by all of its terms, unless such terms are  
altered by the Administrative Law Judge ("ALJ"), at which time I agree to be bound by the terms  
of the Order as altered and entered by the ALJ. By signing below, my client is not waiving its  
right to object to or to suggest modifications to the Order. I further certify that the Confidential  
& Proprietary information (as defined in the Order) will be used solely for the purposes stated  
in, and as set forth in, the Order. If acting as counsel to a party, I certify that I will not disclose  
Confidential & Proprietary information to my client or to any other person not authorized to  
receive Confidential & Proprietary information under the Order. If acting as a consultant or

expert to a party in this case, I certify (a) that I do not participate in any way in any of the decisions or strategies of any competitor of the Producing Party that relate to the sale, pricing, or marketing of delivery services, or any product or service that is related to delivery services, and (b) that I will not use or disclose Confidential & Proprietary information that I receive in this case to assist or facilitate any competitor of the Producing Party in decisions or strategies that relate to the sale, pricing, or marketing of delivery services or any product or service that is related to delivery services.

SIGNED: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Employer: \_\_\_\_\_

Employer's Address: \_\_\_\_\_

Party Representing: \_\_\_\_\_

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_, 2007.  
My commission expires on \_\_\_\_\_.  
Seal:

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

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AFFIDAVIT OF INSIDE COUNSEL FOR PRODUCTION  
OF CONFIDENTIAL AND PROPRIETARY INFORMATION

(FORM 3)

I, \_\_\_\_\_ being first duly sworn state as follows:

1. I am an attorney licensed to practice in \_\_\_\_\_. I am presently employed by \_\_\_\_\_ as its \_\_\_\_\_.
  
2. I have read the Proposed Order Regarding Protection of Confidential and Confidential & Proprietary Information (the "Order") and, as a condition of receiving Confidential & Proprietary Information, I agree to be bound by the terms of the Order, unless such terms are altered by the Administrative Law Judge ("ALJ"), at which time I agree to be bound by the terms of the Order as altered and entered by the ALJ. By signing below, my client does not waive its right to object to or propose modifications to the Order.
  
3. In addition to the obligations and duties imposed on me by the Order, I further certify and represent as follows:
  - a. My involvement on behalf of my employer and its affiliate companies in the negotiation of contracts related to the sale, pricing, or marketing of delivery

services, or any product or service that is related to delivery services, is limited to legal review. I do not negotiate the substantive terms (such as price, quantity, delivery points) of such contracts.

- b. I will not use or disclose Confidential & Proprietary Information that I receive in this case to assist or facilitate any competitor of the Producing Party in decisions or strategies that relate to the sale, pricing, or marketing of delivery services or any product or service that is related to delivery services.

Signed: \_\_\_\_\_

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_, 2007.  
My commission expires on \_\_\_\_\_.  
Seal: