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BEFORE THE
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY) DOCKET NOS.
)
Petition of Commonwealth Edison) 07-0528
Company for Approval of Initial) &
Procurement Plan.) 07-0531
)
) CONSOLIDATED
Verified Petition for Approval of)
Tariffs Implementing a New)
Competitive Procurement Process)
and Recovering Procurement Costs.)

Springfield, Illinois
Monday, December 3, 2007

Met, pursuant to notice, at 1:30 p.m.

BEFORE:

MR. LARRY JONES, Administrative Law Judge

APPEARANCES:

MR. DARRYL BRADFORD
MR. THOMAS RUSSELL

and

MR. E. GLENN RIPPIE
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Chicago, Illinois 60610
Ph. (312) 832-4910

(Appearing on behalf of
Commonwealth Edison Company)

SULLIVAN REPORTING COMPANY, by
Carla J. Boehl, Reporter
Lic. #084-002710

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6 (Appearing on behalf of the
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(Appearing on behalf of Dynegy,
11 Inc.)

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16 (Appearing on behalf of Staff
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17 Commission via teleconference)

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21 (Appearing on behalf of the
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3 General Counsel
4 One South Wacker Drive, Suite 2020
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7 (Appearing on behalf of
8 Invenergy Wind North America,
9 LLC, via teleconference)

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16 Citizens Utility Board via
17 teleconference)

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(Appearing on behalf of
Constellation Energy
Commodities Group, Inc., and
Constellation New Energy, Inc.,
via teleconference)

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(Appearing on behalf of PSEG
Services Corporation via
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5 (Appearing on behalf of the City
6 of Chicago via teleconference)

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WITNESS

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None .

EXHIBITS

MARKED

ADMITTED

All documents

E-Docket

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1 procurement process and recovering procurement costs.

2 At this time I am going to ask the
3 parties to enter your respective appearances orally
4 for the record in those two dockets. In doing so we
5 will assume, unless you tell us differently, that you
6 are appearing in both matters. If that is not the
7 case, please say so when you enter your appearance.

8 We may also have some persons on the
9 phone who have not filed intervening petitions or who
10 are not parties and don't intend to become parties.
11 If that is the case, you need not enter an appearance
12 on the phone, if you are not a party or do not intend
13 to become a party, but you may listen in. If for
14 some reason parties who are parties want to know who
15 is on the phone, they can say so and then we will
16 have you identify yourself in some manner so that at
17 least everyone will know who is there.

18 All right. Having said all that, we
19 will proceed with the appearances in those two
20 dockets. In giving your appearance, please state
21 your name, business address and business phone
22 number. The service list is going to contain your

1 business address and the spelling of your name. So
2 you do not need to spell your name unless you have
3 not made an appearance on the service list as of yet.
4 You will need to give us your business phone number
5 since that would not be on the service list as such.

6 I will say one other thing before I
7 forget it. Since we have quite a few parties on the
8 phone and in the Springfield hearing room, for that
9 matter, if you have something to say during the
10 course of this hearing or these hearings, please make
11 sure to identify yourself before you speak so that
12 everyone will know who is speaking and so the court
13 reporter will attribute your remarks to you.

14 At this time then would the parties
15 please enter your respective appearances orally for
16 the record, first on behalf of the petitioning party,
17 Commonwealth Edison Company.

18 MR. RIPPIE: Good afternoon, Your Honor. On
19 behalf of Petitioner Commonwealth Edison Company,
20 Darryl Bradford and Thomas Russell from Commonwealth
21 Edison, and Glenn Rippie from Foley and Lardner, LLP.
22 My business address is 321 North Clark, Chicago,

1 Illinois 60610, and the phone is area code
2 (312) 832-4910.

3 JUDGE JONES: Thank you. I think we will just
4 continue with appearances from those who are
5 physically present in Springfield. So would you
6 please go forward?

7 MR. MOSSOS: On behalf of the People of the
8 State of Illinois, Elias Mossos, 100 West Randolph
9 Street, 11th Floor, Chicago, Illinois 60601, and the
10 phone is (312) 814-7203.

11 MS. HEDMAN: And Susan Hedman on behalf of the
12 People at the same address.

13 JUDGE JONES: All right. Thank you. Are there
14 other appearances to be entered by those who are here
15 in Springfield?

16 MR. LAKSHMANAN: Yes, Your Honor. Joseph L.
17 Lakshmanan, 2828 North Monroe Street, Decatur,
18 Illinois 62526. My phone number is (217) 872-2336,
19 appearing on behalf of Dynegy, Inc.

20 JUDGE JONES: Thank you. Are there any other
21 appearances to be entered by those who are physically
22 present in Springfield?

1 There are not. We will turn to those
2 who are participating by telephone. Why don't we
3 start with the ICC Commission Staff?

4 MR. FOSCO: Okay, this is Carmen Fosco on
5 behalf of Staff of the Illinois Commerce Commission
6 along with John Feeley and Arshia Javaherian. We are
7 at 160 North LaSalle Street, Suite C-800, Chicago,
8 Illinois 60601, and our phone number is
9 (312) 793-2877.

10 JUDGE JONES: Thank you. How about appearances
11 on behalf of the Retail Energy Supply Association?

12 MR. MOORE: Yes, thank you, Your Honor. This
13 is Steve Moore on behalf of the Retail Energy Supply
14 Association, 200 West Superior Street, Suite 400,
15 Chicago, Illinois 60610.

16 JUDGE JONES: Thank you. Is there an
17 appearance to be entered on behalf of Invenergy Wind
18 North America, LLC?

19 MR. CONDO: Yes, this is Joseph Condo on behalf
20 of Invenergy Wind North America, LLC. Business
21 address is One South Wacker Drive, Suite 2020,
22 Chicago 60606, business phone (312) 224-1400.

1 JUDGE JONES: Thank you. Citizens Utility
2 Board?

3 MS. McKIBBIN: Good afternoon. This is Anne
4 McKibbin for Citizens Utility Board. My address is
5 208 South LaSalle Street, Suite 1760, Chicago,
6 Illinois 60604.

7 And, Your Honor, I am having a little
8 difficulty hearing you on the phone, although
9 everyone else seems pretty loud. But you may be
10 having a little difficulty with your microphone.

11 JUDGE JONES: Is anyone else having trouble
12 hearing me?

13 UNIDENTIFIED SPEAKER: Yes.

14 UNIDENTIFIED SPEAKER: Yes.

15 UNIDENTIFIED SPEAKER: Yes.

16 JUDGE JONES: Is that better?

17 MS. McKIBBIN: Sounds good so far.

18 JUDGE JONES: All right then. Continue to let
19 me know if you are having trouble hearing me, and we
20 will do whatever we need to do to correct that
21 problem.

22 How about Constellation Energy

1 Commodities Group, Inc.?

2 MS. FONNER: This is Cynthia Fonner for
3 Constellation Energy Commodities Group and
4 Constellation New Energy, Inc., 550 West Washington,
5 Suite 300, Chicago, Illinois 60661, and my telephone
6 number is (312) 704-8518.

7 JUDGE JONES: Thank you. Is there an
8 appearance to be entered on behalf of PSEG Energy
9 Resources? Let the record show there are not, at
10 least at this time.

11 MR. DeFURIA: My name is Anthony DeFuria of
12 PSEG Energy Resources and Trade. I am not a
13 representative of the company. I was just listening
14 in just to hear what was going on.

15 JUDGE JONES: What is your capacity?

16 MR. DeFURIA: I am regional marketing manager
17 responsible for marketing origination for the
18 company. We have legal representatives who were
19 possibly going to participate on the call, and it
20 doesn't sound like they are on the call right now. I
21 believe that you may have somebody already on the
22 service list, but I am not sure, from our company.

1 JUDGE JONES: Did you give us the spelling of
2 your name?

3 MR. DeFURIA: D-E, capital F as in Frank,
4 U-R-I-A.

5 JUDGE JONES: Thank you. Are there other
6 appearances to be entered by those who are
7 participating by telephone?

8 MR. JOLLY: On behalf of the City of Chicago,
9 Ronald D. Jolly. My address is 30 North LaSalle,
10 Suite 900, Chicago, Illinois 60602.

11 JUDGE JONES: Could you give us your phone
12 number, please?

13 MR. JOLLY: Sure, it is (312) 744-6929.

14 JUDGE JONES: Thank you. Are there any others?

15 MR. FLYNN: Judge, this is Chris Flynn. I just
16 wanted to confirm because I also had a great deal of
17 trouble hearing you earlier, although it is coming
18 through very well now, that you are taking
19 appearances in the ComEd docket now.

20 JUDGE JONES: That's correct.

21 MR. FLYNN: All right. Thank you.

22 JUDGE JONES: Are there any other appearances

1 at this time in the two ComEd dockets? Let the
2 record show there are not.

3 Let me back up a minute, too, since
4 there may have been some difficulty in hearing me
5 earlier. Is there anything that has occurred so far
6 that anybody needs repeated? Let the record show no
7 response. Again, if anybody is having any trouble
8 hearing me or anybody else, just speak up and we will
9 do whatever we need to do to correct that situation.

10 As noted, there are a number of
11 intervening petitions which have been filed by
12 various potential parties. I suppose the simplest
13 thing to do with those is just go through them
14 quickly. If there are no objections to those
15 Petitions for Leave to Intervene, they will be
16 granted. But if there are objections to them, we
17 will deal with them.

18 There was a Verified Petition for
19 Leave to Intervene filed by the People of the State
20 of Illinois. Is there any objection to that Petition
21 for Leave to Intervene?

22 MR. RIPPIE: No, Your Honor.

1 JUDGE JONES: Thank you. That Petition for
2 Leave to Intervene is granted.

3 There are several other Petitions for
4 Leave to Intervene that have been filed. Does
5 anybody want to hear them read one by one? Let the
6 record show no response.

7 Does anyone have any objection to any
8 of the Petitions for Leave to Intervene that have
9 been filed in either of the two ComEd dockets? Let
10 the record show there are no such objections.

11 Accordingly, the Petitions for Leave
12 to Intervene filed by Dynegy, Inc., is granted. So
13 is the Petition for Leave to Intervene filed by
14 Citizens Utility Board. Also granted would be the
15 Petitions for Leave to Intervene filed by
16 Constellation Energy Commodities Group, Inc., and
17 Constellation New Energy, Inc. Similarly, Petitions
18 for Leave to Intervene filed by Retail Energy Supply
19 Association is granted. Petition for Leave to
20 Intervene by PSEG Resources and Trade, LLC, is
21 granted. Petition to Intervene by Energy Win North
22 America, LLC, is granted. So all those Petitions for

1 Leave to Intervene are granted, at least with respect
2 to the dockets in which such petitions for Leave to
3 Intervene were filed.

4 Are there any other Petitions for
5 Leave to Intervene that are on file that I did not
6 mention?

7 MR. DONOVAN: Your Honor, this is Joe Donovan.
8 I apologize, I did not hear the Coalition of Energy
9 Suppliers in -0531 discussed.

10 JUDGE JONES: Any objections to the Petition
11 for Leave to Intervene by that potential intervenor
12 in -0531? Let the record show there are not. The
13 Petition for Leave to Intervene on behalf of the
14 Coalition is granted in that docket.

15 Have you entered an appearance yet?

16 MR. DONOVAN: I have not. It was on
17 appearances for both, Your Honor.

18 JUDGE JONES: Go ahead and enter your
19 appearance at this time.

20 MR. DONOVAN: Very well, Your Honor, thank you.
21 On behalf of the Coalition of Energy Suppliers, the
22 law firm of DLA Piper US, LLP, 203 North LaSalle

1 Street, Suite 1900, Chicago 60601, appearing by
2 Joseph D. Donovan, D-O-N-O-V-A-N, and Christopher J.
3 Townsend, T-O-W-N-S-E-N-D.

4 JUDGE JONES: Thank you. What's your phone
5 number?

6 MR. DONOVAN: Area code (312) 368-7926.

7 JUDGE JONES: And are you appearing --

8 MR. DONOVAN: I am sorry, Your Honor, I was
9 just going to clarify that for Docket -0531.

10 JUDGE JONES: Thank you. Are there any other
11 pending intervening petitions to be addressed? Let
12 the record show no response.

13 As the parties are aware 07-0528 and
14 07-0531 were both filings made by Commonwealth Edison
15 Company and are the subject of this hearing this
16 afternoon. They will continue to be heard
17 simultaneously whether or not consolidated. Let's go
18 ahead and see at this time if there are any
19 objections to consolidation. If there are, we will
20 deal with that issue at a later time. It may not be
21 later than sometime today, but it won't be at this
22 point in time in this hearing.

1 So having said that, are there any
2 objections to the consolidation of those two dockets
3 at this time?

4 MR. RIPPIE: Your Honor, for the record those
5 dockets were filed separately because the company had
6 concerns at the time of their initiation that
7 different legal standards might apply to the decision
8 of whether or not to hold hearings in those dockets,
9 and in fact the Commission might conceivably have
10 reached different decisions with respect to the need
11 to hold a hearing in the tariffs and in the plan.

12 Given that the Commission has
13 determined that hearings should be held in both
14 dockets and that evidence has been submitted properly
15 in the two dockets, the company does not have any
16 objection to consolidating those dockets for a
17 decision, i.e. for the remaining proceedings.

18 JUDGE JONES: Thank you. We will see if anyone
19 else has any objection to the consolidation of those
20 two dockets. Does anyone, that is any other party,
21 have any objections to the consolidation of those two
22 ComEd dockets? Let the record show no response. At

1 this time then let the record show that proceedings
2 in 07-0528 and 07-0531 are hereby consolidated.

3 There are several other issues, many
4 of them somewhat procedural in nature and some
5 somewhat intertwining. We will do the best we can to
6 keep them as straight as we can. One relates to the
7 question of cross examination. I just want to make a
8 couple of comments up front and then we will see
9 where the parties stand with that.

10 I think as the parties are aware some
11 parties have essentially gone on record suggesting
12 that this matter be conducted and concluded without
13 any cross examination of witnesses. If there are no
14 objections to that, that is what we will do. If
15 there are no objections to proceeding with no cross
16 examination, we will proceed in that manner. If
17 there are objections to that, then we will take that
18 up, take that question up, and determine what needs
19 to happen with respect to it.

20 As parties may be aware, it is
21 somewhat of a complicated question about whether
22 there is a right to cross examination in these

1 dockets. And the reason for that is that the rights
2 of those who may wish to cross need to be considered
3 alongside the rights of those who have made filings
4 pursuant to the statutory filing scheme in
5 16-111.5(j). There is a sketch or filing scheme set
6 forward which lays out, not only the filing date
7 deadlines, but also the nature of the filing and the
8 criteria to be met with respect to at least certain
9 of those filings.

10 So presumably any party that made
11 filings compliant with that statutory structure has
12 rights of some sort here. Whether they have a right
13 to have their comments considered without having to
14 have those rights subjected to a condition of cross
15 examination is a difficult question. As noted, if
16 there are no objections to proceeding without cross,
17 then that issue goes away. To the extent there is an
18 issue there, we will have to deal with it. But I do
19 want to point out up front that it is not as simple
20 an issue as it may appear to be at first glance.

21 I think it is also the case that there
22 is some case law regarding whether the Commission,

1 once it opts to set a matter for hearing, is
2 obligated to grant a full-blown formal cross
3 examination hearing. At least in the Finkel case
4 that was held not to be the case, based on the
5 circumstances there.

6 I would also note that if there were
7 to be any cross, it would obviously have to be
8 conducted very quickly. It will not be today. The
9 parties have been notified that there will not be
10 cross examination today, and there will not. But if
11 there is to be cross, it would have to be scheduled
12 very, very quickly, given the limited amount of time
13 that's left to resolve this docket.

14 At a minimum, there will have to be or
15 at least there will be a proposed order issued, an
16 opportunity to parties to file a brief on exceptions,
17 and then there will have to be a matter presented to
18 the Commission for its deliberation and action. And
19 these matters, at least under the current scheduling
20 plan, will be before the Commission for its
21 consideration and action during the prebench and/or
22 bench sessions on December 18 and 19.

1 So having said all that, I guess it is
2 probably the appropriate time to turn to the parties
3 to see if anyone has any objections to proceeding in
4 these two ComEd dockets without cross examination.

5 MR. FOSCO: Your Honor, this is Carmen Fosco on
6 behalf of Staff. On Friday we sent an e-mail to all
7 of the parties asking if anyone intended to conduct
8 cross examination. And everyone that responded,
9 which included everyone that's entered an appearance
10 today, I believe, indicated that they did not intend
11 to conduct cross examination and were willing to
12 waive that, with I think the only other limitation
13 being a clarification that the waiver is only in this
14 year's docket, not in any subsequent year's docket.
15 And the parties maybe can speak for themselves, but
16 that's the communications that happened among the
17 parties on Friday.

18 JUDGE JONES: All right. Thank you, Mr. Fosco.
19 And what was that condition again?

20 MR. FOSCO: Oh, I believe Joe Lakshmanan on
21 behalf of Dynegy just clarified that he is only
22 waiving cross examination in this docket, not in any

1 future year's procurement docket.

2 JUDGE JONES: Okay, thank you.

3 MR. FOSCO: And I would guess, Your Honor, that
4 would apply to Staff and I think to all parties
5 actually, was just the clarification he made.

6 MR. RIPPIE: Your Honor, I think it --

7 JUDGE JONES: Please identify yourself.

8 MR. RIPPIE: I think it was a fair implication
9 from Mr. Fosco's e-mail, although I will obviously
10 leave it to him and the parties to confirm, that the
11 request extended not simply to not having cross
12 examination but for the Commission, to the extent
13 that its rules in 200.525 apply, that the parties
14 would stipulate to essentially allow Your Honor and
15 the Commission to conduct this on a paper hearing
16 basis, to the extent that those rules apply,
17 including submission of the various documents with
18 affidavits.

19 JUDGE JONES: Just so we are clear on what
20 conditions would be attached to the parties'
21 agreement on these issues, is it essentially that the
22 parties' agreement to do this in such a manner here

1 creates no presumptions with regard to any other
2 dockets? Is that somewhat the case? Is that
3 essentially what you are saying or are you going to
4 something else?

5 MR. LAKSHMANAN: No, Your Honor, this is Joe
6 Lakshmanan. And your indication of what I was
7 attempting to get at is accurate, that there would be
8 no presumption in future dockets.

9 JUDGE JONES: Thank you. Anybody else wish to
10 comment on that question? Okay, thank you.

11 I think there might -- given the fact
12 that the parties have discussed this and that there
13 appears to be perhaps at least one condition and then
14 some other assumptions in there with respect to what
15 will comprise the record of this docket and what form
16 that would take, it might be preferable to go ahead
17 and see how that would work before we do anything
18 else in terms of a ruling, because I want to make
19 sure that what we are doing is clear and also be that
20 it is consistent with what the parties have come up
21 with on their own.

22 So in terms of what would comprise the

1 record here, we sort of have two types of broad
2 filing categories. And that's not too surprising,
3 given the way the statute is structured. Some of the
4 parties have filed affidavits, and other parties have
5 filed testimony and may intend to file affidavits.
6 There is sort of a third group that filed their
7 objections and made other filings, and some of those
8 were in verified form and some were not. And so I
9 just want to make sure that we cover this in the
10 manner that the parties intended.

11 So anybody that has affidavits to be
12 presented alongside their filings or as their
13 evidentiary filing would appear to involve the least
14 questions about how that you would work. Is it the
15 intent that anybody who has submitted prepared
16 testimony be given the opportunity to support that
17 with an affidavit if they haven't already done so?
18 Was that the idea?

19 MR. RIPPIE: Yes, if I could speak just a
20 little bit presumptuously, Your Honor, I believe that
21 was. And my understanding is that the only party
22 that would apply to, I believe, is CUB, and

1 Ms. McKibbin, I believe, has already filed an
2 affidavit for Mr. Thomas as of this morning, late
3 this morning, early this afternoon.

4 JUDGE JONES: I think that's true. There were
5 some -- well, let's see, that's a different docket so
6 we won't get into that.

7 Are there any other parties that have
8 prefiled testimony filings on the various filing
9 dates that have not yet filed affidavits to go along
10 with that prefiled testimony? Let the record show no
11 response.

12 Then we have the filings, for example,
13 by the Commission Staff. I believe the first of
14 those filings was submitted in the form of
15 objections. I do not believe there was an affidavit
16 or anything similar to that with those. Then the
17 subsequent Staff filing, I believe, was filed with an
18 affidavit from Mr. Pregozen. What is Staff's intent
19 there with respect to whether and to what extent
20 those filings were headed for the evidentiary record?
21 And other parties will get a chance to speak to that,
22 too, but let's start with Mr. Fosco or other Staff

1 counsel.

2 MR. FOSCO: Your Honor, this is Carmen Fosco on
3 behalf of Staff. Your Honor, we were, I guess,
4 wanting if you will to let our objections stand as
5 called for under the statute. We were not intending
6 to submit any additional verifications or testimony
7 to support that. We did, as you correctly stated,
8 file an affidavit with our reply comments of Mr.
9 Pregozen, and we would expect that that would become
10 part of the evidentiary record.

11 JUDGE JONES: So what you are saying is that
12 your intent would be to offer the reply comments
13 which were accompanied by an affidavit into the
14 evidentiary record?

15 MR. FOSCO: Yes, Your Honor, along with the
16 affidavit. And where objections stand is what is
17 called for under the Act initially. So we assume
18 those would become part of the record; just they are
19 not evidence because they are not verified.

20 JUDGE JONES: So you deem those to be part of
21 the record in this docket in some manner, in whatever
22 manner was intended by the statute?

1 MR. FOSCO: Correct, Your Honor.

2 JUDGE JONES: Thank you.

3 MR. RIPPIE: Your Honor, I think Commonwealth
4 Edison's view is similar. The statute clearly
5 contemplates the arguments in the nature of
6 objections and comments, as well as alternative
7 suggestions can be offered by parties. Those
8 materials or materials similar to them, such as
9 pleadings or comments, in other types of proceedings
10 are accepted in the record. It was our intention,
11 the company's intention, that where those documents
12 raised issues of fact as opposed to issues of law or
13 policy, they were either supported by affidavits or
14 were verified by the affidavits of various affiants
15 accompanying those filings.

16 But it was our understanding, as well
17 as Staff's, that those portions of the submissions
18 that were attested to would go into the evidentiary
19 record and would relate to disputes of fact, and the
20 remaining materials filed by all parties would be
21 part of the record as to the other kinds of questions
22 that are appropriately deemed considered under the

1 statute.

2 JUDGE JONES: Thank you. Mr. Rippie, with
3 respect to the testimony filings made by ComEd in
4 filings subsequent to the plan, what's the intent
5 with respect to those?

6 MR. RIPPIE: Mr. McNeil, I believe, verified
7 all or portions or those portions of the subsequent
8 filings in -0528 that contained factual comments. It
9 was our belief, as was Staff's, that the arguments in
10 -0531 were not in any substantial measure issues of
11 fact but were questions of law and policy. And,
12 therefore, other than the initial petition and
13 submission which was supported by the affidavit of
14 Mr. Alongi, there were not affidavits submitted with
15 those documents.

16 With the exception of the issue on
17 which Mr. Pregozen submitted a verification on behalf
18 of the Commission Staff, I believe that is true for
19 all the filings or at least all the filings
20 discussing issues in -0531. The various parties that
21 filed documents in both dockets, the affidavits, for
22 example, Mr. McCullough's affidavit, dealt largely,

1 if not exclusively, with issues that had been raised
2 before consolidation in -0528.

3 JUDGE JONES: I guess the question we are in
4 the process of trying to get answered here is
5 specifically which of these filings are headed for
6 the evidentiary record and which of those filings are
7 in the record but not headed for the evidentiary
8 record under the agreement of the parties or with the
9 concurrence of the parties. So I guess the question
10 becomes what's the simplest way to handle that,
11 because it appears that some parties, not
12 surprisingly, have some in each category and there
13 are quite a few filings involved.

14 Mr. Rippie, do you have a breakdown of
15 which are headed for the evidentiary record in your
16 opinion and which are not?

17 MR. RIPPIE: Well, I do for the Company's
18 filings. And I could venture a guess for others, but
19 I won't do that. It was our intention to offer as
20 factual evidence the plan -- in -0528, the plan, the
21 McNeil verification, the response of ComEd to the
22 extent verified by Mr. McNeil's affidavit, Mr.

1 McNeil's and Mr. Fisher's responsive affidavits, the
2 reply, again to the extent verified by Mr. McNeil, as
3 well as Mr. McNeil's, Mr. Fisher's and Mr. Naumann's
4 affidavits on reply.

5 And in -0531 to offer the petition and
6 tariffs and the Alongi affidavit, and I would hope by
7 agreement of the parties. But if there is an issue
8 with that, I can certainly submit something
9 supplemental, simply the tariff sheets that had been
10 attached, to the extent that there is any question of
11 fact about those tariff sheets that were attached to
12 the subsequent response and reply.

13 JUDGE JONES: So those are the elements of the
14 various filings that you would propose be put into
15 the evidentiary record, either in whole or in some
16 instances subject to the qualifying language that you
17 stated?

18 MR. RIPPIE: Yes, Your Honor.

19 JUDGE JONES: Thank you. Mr. Fosco, regarding
20 the Staff filing, you noted that the second filing
21 was supported by affidavit. Was that -- are you
22 offering the entire second filing into the

1 evidentiary record or are you offering something
2 else?

3 MR. FOSCO: Your Honor, the affidavit only
4 related to the collateral cost issue. Hang on a
5 second if you could.

6 We could introduce the whole reply
7 comments into the record, but I would be happy to
8 limit it to the part that was verified, which was Mr.
9 Pregozen's reference to the collateral issue.

10 JUDGE JONES: What was your preference there?

11 MR. FOSCO: Well, I think, Your Honor, it would
12 probably make more sense just to admit the portion of
13 our reply comments that were verified by Mr. Pregozen
14 which would be -- hold on a second, please.

15 It would be really only Section C-1, I
16 believe, yeah. The section we would admit would be
17 Section C-1 of Staff's reply comments and then the
18 affidavit of Mr. Pregozen into the evidentiary
19 record.

20 JUDGE JONES: Thank you. With regard to the
21 People, and noting as I ask this that there are
22 affidavits submitted with the People's filings, have

1 you determined specifically which of those filing
2 elements you want offered into the evidentiary
3 record?

4 MS. HEDMAN: Yes, Your Honor. In the
5 consolidated dockets of -0528 and 31 we would offer
6 the affidavit of Robert McCullough filed on November
7 13 which has been marked as AG Exhibit 1 and the
8 associated exhibit AG Exhibit 1.1.

9 We would also offer the affidavit of
10 Robert McCullough dated November 28, and that has
11 been appended -- that has been marked as AG Exhibit
12 2.0 and appended to that are associated Exhibits AG
13 2.1 and AG 2.2. And we would seek to have those
14 admitted into evidence.

15 JUDGE JONES: Okay, thank you. With respect to
16 the Citizens Utility Board, again there are some
17 affidavits that have been filed with respect to those
18 filings. Ms. McKibbin, what did you intend to offer
19 into the evidentiary record?

20 MS. MCKIBBIN: Your Honor, I would like to
21 offer the testimony of Christopher Thomas marked as
22 CUB Exhibit 1.0 which was filed on November 9, along

1 with its associated attachments CUB Exhibit 1.01 and
2 CUB Exhibit 1.02. And as you mentioned I filed an
3 affidavit this morning testifying to the veracity of
4 those testimonies.

5 We would also like to offer our CUB
6 supplemental comments and the attached Thomas
7 affidavit.

8 JUDGE JONES: Thank you. Are there any points
9 of clarification with regard to what CUB is offering?
10 Okay, there are not.

11 MR. RIPPIE: Ms. McKibbin, this is Glenn
12 Rippie. Just to be clear, you are offering the
13 supplemental comments to the extent that they are
14 verified by Mr. Thomas?

15 MS. MCKIBBIN: Yes.

16 MR. RIPPIE: Thank you.

17 JUDGE JONES: Okay, thank you. We have heard
18 from several of the parties at this point. How about
19 Dynegy?

20 MR. LAKSHMANAN: Thank you, Your Honor. Dynegy
21 would offer its verified objections. They were
22 accompanied by the verification of Barry Huddleston.

1 So we would offer verified objections to the extent
2 they were verified by Mr. Huddleston.

3 JUDGE JONES: Thank you. Any clarification
4 with regard to the Dynegy or to Dynegy's proposal?

5 Obviously, there are several other
6 parties who have made one or more filings in this
7 proceeding. Were any of the other parties intending
8 to offer those filings or any portions of those
9 filings into the evidentiary record in this case or
10 cases?

11 MR. MOORE: Your Honor, this is Steve Moore on
12 behalf of RESA, and we had filed reply comments and
13 also attached to those was RESA Reply Testimony
14 Number 1. I did not have a verification, but I would
15 ask leave to file a verification for that and have
16 the comment and the attachment put into the
17 evidentiary record. The attachment does have quite a
18 bit of figures in it, and the comments combine some
19 of those and at least put those into argument. So I
20 would like to have leave to file a verification, and
21 then have those documents put into evidence.

22 JUDGE JONES: Thank you. Any clarification

1 regarding that? That's with respect to the reply
2 comments, is that correct?

3 MR. MOORE: That's correct.

4 JUDGE JONES: Thank you. Are there any other
5 parties who wish to offer portions of their filings
6 into the evidentiary record? Let the record show no
7 response.

8 All right. I think we have covered
9 the filings that have been made with respect to the
10 inclusion of them into the evidentiary record. We do
11 not have specific e-Docket references in all cases.
12 I am somewhat reluctant to take the time that would
13 be required to go in any more detail with regard to
14 those filings at this time.

15 MR. RIPPIE: Your Honor, if it would make your
16 life simpler and the Commission's life simpler, we
17 could certainly adopt the practice of each party
18 filing just a schedule showing the e-Docket numbers
19 for the various documents that we have each
20 identified on the record here today. I am sure that
21 we could do that in relatively short order.

22 JUDGE JONES: Does anybody have any objection

1 to that being done? Okay. Let the record show no
2 response.

3 So in terms of sort of making
4 additional filings with respect to these evidentiary
5 items, there would be the verification to be
6 submitted by Mr. Moore on behalf of RESA and then
7 also the schedules or lists of these items being
8 offered into the evidentiary record as they appear on
9 the e-Docket filing system.

10 So I think we have covered the bases
11 as well as we can today with respect to the filings
12 and their relationship to the evidentiary record in
13 each of these cases. Let's make sure. Do any of the
14 parties have any points of clarification or objection
15 with respect to any of the requests that have been
16 made for admission of filed items or to be filed
17 items into the evidentiary record in this proceeding?
18 Let the record show no response.

19 Accordingly, the request for admission
20 of various filed items into the evidentiary record by
21 several of the parties are hereby granted. Those
22 items will be deemed part of the evidentiary record

1 in this proceeding. In some instances they are
2 admitted subject to some qualifying language.

3 In addition, Mr. Moore is given leave
4 to file a verification relative to the RESA reply
5 comments. And also any party that is seeking and has
6 been allowed to put materials into the evidentiary
7 record will be filing the schedule or list, as
8 mentioned a few minutes ago, identifying them as they
9 appear on the e-Docket filing system. In any event,
10 those items are deemed part of the evidentiary record
11 in this proceeding.

12 (Whereupon the aforementioned
13 documents submitted by
14 Commonwealth Edison, ICC Staff,
15 Attorney General, CUB, DYNEGY
16 and RESA were admitted into
17 evidence.)

18 JUDGE JONES: Let me back up a minute then to
19 the previously discussed question about proceeding
20 without cross examination. Part of that arrangement
21 involved treatment of the various filings as we have
22 just taken up. So to get back to the cross

1 examination issue, I think the proposal that has been
2 made is that this matter proceed without cross
3 examination, subject to the understanding and
4 condition that this procedural accommodation in this
5 docket creates no presumptions with respect to any
6 other dockets, current or future.

7 So does any party have any objection
8 to or further clarification with respect to
9 proceeding in these two dockets -0528 and -0531,
10 without cross examination, subject to the condition
11 that doing so creates no presumptions in other
12 dockets? Any objections? All right. Let the record
13 show there are no objections. So it will be -- we
14 will proceed in that manner and it will be deemed to
15 have been done without objection of the parties. Any
16 further clarification on that? Okay, thank you.

17 Not to jump ahead, I don't want to get in
18 too far here. As I mentioned, whatever the
19 requirements will be or may not be, there will be a
20 proposed order issued in this matter, and parties
21 will be given an opportunity to file a brief on
22 exception. All I can really tell you about the date

1 at this point, other than what I have already
2 mentioned, is that notification will be provided to
3 the parties, not just on the day you get the proposed
4 order but in advance of that, to give you a heads up
5 on when it will be issued and what the turn around
6 time will be so you at least have better information
7 to work with at that time for planning purposes.

8 Essentially, next week is the week in
9 which there will be an order put on the agenda for
10 the December 18 and 19 meetings. And so anything
11 that has to happen in connection with that will need
12 to be completed prior to that date and that will
13 include the issuance of a proposed order and the
14 filing of briefs on exception.

15 MR. RIPPIE: Your Honor, if I may ask a
16 question?

17 JUDGE JONES: Yes, sir.

18 MR. RIPPIE: Would it be helpful to Your Honor
19 if the parties were to submit either or both full
20 draft orders or at least statements of their position
21 in a manner that has been done in some other dockets
22 in the past? We are certainly aware of the time

1 pressures that the schedule imposes on you as well.

2 JUDGE JONES: That's a good question. I think
3 probably we will see what the parties have to say
4 about that. Obviously, the compressed schedule is a
5 factor here. To include that in the post-hearing
6 scheduling in this case would require those kinds of
7 filings to be done very quickly. And whether the
8 parties -- I think, given that, it is certainly the
9 case that no party will be required to file anything
10 after today other than what has already been
11 discussed on the record today. If there are parties
12 who wish to make filings, be it in the form of a
13 draft order or summary of position, etc., we can
14 explore that a little bit.

15 One thing we want to avoid here is a
16 situation where if the parties are going to go to the
17 trouble to make a filing, that that filing needs to
18 be worked in the schedule in time for it to be given
19 due consideration. That's why the short number of
20 days that are left makes scheduling any type of
21 filing like that rather problematic. But we can
22 certainly hear what the parties may have to suggest

1 in that regard.

2 As noted, if the parties wish to
3 explore the opportunity to make a filing of that
4 type, we can discuss that. Otherwise, I am not going
5 to require anybody to file anything, given the short
6 amount of time you would have to prepare it.

7 Does anybody have anything to say
8 about that? Ms. Hedman.

9 MS. HEDMAN: Your Honor, as a practical matter
10 it seems to me that there is not enough time for the
11 parties to provide that kind of information. In
12 fact, the only way I could see that as being done in
13 a manner that would be fair to all parties would be
14 if the company were to submit an order and we would
15 have time to react to that order.

16 At this point it strikes me that it is
17 too late to do that, and we should raise our issues
18 in our briefs on exception.

19 MR. RIPPIE: Your Honor, it was the intent of
20 my question, and I suppose it remains my intention,
21 that this could be a vehicle that would not
22 necessarily be difficult for parties to assemble in a

1 very short period of time, say by Wednesday. And one
2 idea that was rattling around, at least in my head,
3 is that the document that might be -- the parties
4 might be allowed but not required to submit to Your
5 Honor, would be limited to two things. And that is,
6 as has been done in some other dockets, summaries of
7 the parties' own position which could simply be a way
8 to aid Your Honor in the preparation of what will
9 be -- I guess will now only be two lengthy proposed
10 orders and the Commission conclusion sections.

11 There are a few parties that have
12 commented, especially Staff and at least in these
13 dockets ComEd, have commented on virtually all the
14 issues. But a number of other parties have commented
15 on, in fact I believe all the other parties, have
16 commented on only a subset of the issues. And we
17 would be prepared at least to file such a -- it is
18 far from a complete proposed order, a draft order --
19 but we would be prepared to file pieces of such a
20 draft order by, I think, the middle of this week.

21 Your Honor, if that's something that
22 is not going to be helpful to you, then certainly it

1 is not our intention or desire to make life difficult
2 for either you or for the other parties. But if that
3 kind of submission would be helpful, then we are
4 prepared to make it.

5 JUDGE JONES: Thank you, and we may hear from
6 Staff and some other parties on this in a minute. I
7 think it is a legitimate question, but not a simple
8 one to resolve. I mean, I think all the post-hearing
9 filings are always helpful to some degree. But here
10 it also comes down to a matter of timing, and those
11 things are hard to reconcile with the remaining days
12 in this compressed schedule.

13 Does Staff or other parties have
14 anything to say about this?

15 MR. FOSCO: I am sorry, were you asking Staff,
16 Your Honor? I am sorry I didn't catch that.

17 JUDGE JONES: Sure.

18 MR. FOSCO: Well, Your Honor, quite honestly,
19 given we have other filings in other dockets and it
20 is very late in the proceeding, so Staff is not
21 certain that it would be in a position to file
22 anything. However, if other parties wanted to file a

1 summary of their position or, you know, if Your Honor
2 wanted a proposed order from the company, we don't
3 object to that. It may be, given the time
4 constraints on this docket as well as other dockets
5 that are proceeding simultaneously, I think the time
6 constraints, I think, on all parties are very great
7 right now.

8 And I guess I would mention that our
9 filings are not exceedingly long. I suppose we could
10 go through and sort of put it more into a form that a
11 summary would have in an order, but I would not
12 expect our summary if we did one to differ very much
13 from what he already have out there.

14 JUDGE JONES: Thank you. Does anybody else
15 have any comments? Ms. Hedman.

16 MS. HEDMAN: We would object if ComEd were to
17 file something. I think we would feel that it would
18 be necessary for us to respond to that if they chose
19 to file something further in this docket. And at
20 this point I just don't think there is enough time,
21 also given the press of other filings that are due at
22 the Commission over the next couple of weeks.

1 JUDGE JONES: I am not quite sure where we are
2 at on this question. I will note one other thing,
3 and I don't want to spend a lot of time on this. The
4 issue hasn't been raised, and that is whether someone
5 actually has a right to make a filing. I think you
6 can make some sort of post-hearing comment under the
7 Administrative Procedure Act. There is that and then
8 there is also the Commission's rules which state in
9 part that any party can request the opportunity to
10 file a brief. So to the extent that those Commission
11 rules would govern, it would make it sort of
12 discretionary in terms of whether to allow it or not.
13 I don't know that anybody is really asserting that
14 they have the right to do so, other than through a
15 BOE process or response to a proposed order.

16 But given that there may be some level
17 of disagreement over whether such a filing is
18 being -- there is opportunity to make such a filing
19 as is being sought here, I just want to make sure
20 that we are clear on whether someone is actually
21 asserting a right to do that or simply just making an
22 offer of sorts.

1 So, Mr. Rippie, would you care to
2 comment on that?

3 MR. RIPPIE: Yes, we are making an offer to the
4 extent it would be helpful to Your Honor, and I am
5 attempting to adapt the nature of my offer to
6 mitigate as much as possible, although I understand I
7 can't eliminate it entirely, but to mitigate as much
8 as possible Ms. Hedman's concern by not
9 characterizing it as a complete draft order but only
10 certain sections thereof. I understand that does not
11 remove her concern.

12 JUDGE JONES: Okay, anything further? This is
13 a pretty unusual case, to say the least. It would be
14 pretty unusual for me to turn down an opportunity to
15 get a draft order from the parties. Here we have a
16 situation where there is some concern expressed
17 actually by other, at least one other, party to the
18 process that there just isn't time to do it right, at
19 least from their standpoint. I understand
20 Mr. Rippie's offer on behalf of ComEd to be that, an
21 offer to make a filing, and along with that to allow
22 others to make a filing at the same time.

1 So all things considered, I guess my
2 statement at this time would be that there will be no
3 post-hearing filings scheduled of that type. It is a
4 very difficult question because I think there would
5 be some value to them. But given the time
6 constraints in the process and on other parties and
7 the fact that the filing has been offered as an offer
8 and not as a request or assertion of a right to do
9 it, we will simply state that the record will make
10 provision for no post-hearing filings of that type.
11 And again that assumes that there are no other
12 post-hearing filings being requested before we
13 conclude this hearing today, other than what we have
14 already discussed.

15 So thank you for your input on that
16 question. Anything else with regard to that? Okay.
17 Let the record show there is not.

18 I think that may cover the bases, but
19 I could be wrong. Let me make sure. Do the parties
20 have anything else for the record today before we
21 close the record in this matter, subject only to the
22 post-hearing filings that were previously scheduled

1 to occur? All right. At this time then let the
2 record show that the hearing is concluded in these
3 two consolidated matters. As such, the record is
4 marked heard and taken, subject only to the
5 post-hearing filings previously discussed.

6 HEARD AND TAKEN

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