

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

COMMONWEALTH EDISON COMPANY	)	
	)	
Application of COMMONWEALTH EDISON	)	
COMPANY for a Certificate of Public	)	
Convenience and Necessity, pursuant to	)	Docket No. 07-0310
Section 8-406 of the Illinois Public Utilities Act,	)	
to construct, operate, and maintain a new	)	
138,000-volt electric transmission line in Kane	)	
and McHenry Counties, Illinois.	)	

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**INTERVENOR NEUMANN HOMES, INC.’S BRIEF IN REPLY TO EXCEPTIONS**

Intervenor Neumann Homes, Inc. (“Neumann Homes”), by and through its attorneys, and pursuant to Section 200.830 of the Commission’s Rules of Practice (83 Ill. Adm. Code 200.830) submits this Brief in Reply to Exceptions filed by the Village of Huntley (“Huntley”) and the Kreutzer Road Parties in response to the Commission’s Proposed Order and Certificate of Public Convenience and Necessity dated July 11, 2008 (the “Proposed Order”).

**I. Reply to Huntley’s Exceptions**

The record evidence conclusively demonstrates that the Kreutzer Road Route, proposed by ComEd, is the least cost means of satisfying the service needs of ComEd’s customers. The Staff of the Commission and a majority of the intervenors, including Neumann Homes, support the Kreutzer Road Route. By contrast, both Huntley and the Kreutzer Road Parties oppose the Kreutzer Road Route and have instead proposed an alternative route known as the Modified Freeman-Galligan Route. However, neither Huntley nor the Kreutzer Road Parties could show that the Modified Freeman-Galligan Route was least cost at the evidentiary hearing conducted by Administrative Law Judge Dolan. Further, Huntley’s Brief on Exceptions is nothing more than a rehash of the arguments it has previously raised and which were properly rejected in the

Proposed Order.

In its Brief on Exceptions, Huntley seeks to trivialize the Modified Freeman-Galligan Route's adverse impact on The Conservancy by misstating the record evidence regarding the development's physical and financial status. Contrary to Huntley's claim that "there has been a very limited amount of construction and development of infrastructure in The Conservancy" (Huntley Brief at pp. 14-15), the record evidence demonstrates that Neumann Homes has completed a number of substantial projects relating to the development, including but not limited to:

- Securing preliminary plat plan approval for the entire 985 home development and *final plat approval* for 120 of those lots;
- Installation of water utilities (including in the area of the Modified Freeman-Galligan Route);
- Installation of sanitary sewer utilities (including in the area of the Modified Freeman-Galligan Route);
- Construction of an elementary school;
- Construction of a water tower;
- Installation of a pump/lift station;
- Installation of fire hydrants;
- Installation of roadways;
- Installation of sidewalks;
- Installation of curbs and gutters;
- Installation of drain tile;
- Construction of two model homes;
- Construction of two home foundations;
- Performance of erosion control; and
- Performance of mass earth work for future construction.

[Tr. of Jan. 30, 2008 Hr'g at 493:19-494:9; ComEd Ex. 6.0 at 69-72; ComEd Ex. 8.0 at 196-198, 267-280; ComEd Exs. 8.10, 8.11, 8.12; Tr. of Jan. 29, 2008 Hr'g at 290:4-22; Tr. of Jan. 30, 2008 Hr'g at 362:8-363:22; IndyMac Ex 1.0 at 1:22-2:2; Tr. of Jan. 30, 2008 Hr'g at 445:13-20, 460:16-21.] Further, the Village of Gilberts invested an estimated \$8.3 million to extend infrastructure to and through The Conservancy. [Village of Gilberts Ex. 2.0 at 28-41; Tr. of Jan. 30, 2008 Hr'g at 366:1-10.]

It is undisputed that the Modified Freeman-Galligan Route would slice right through the very heart of The Conservancy, *including the actual home sites*, unless the development's layout was significantly altered.<sup>1</sup> [ComEd Ex.8.0 at 189-209; ComEd. Ex. 8.2; Tr. of Jan. 29, 2008 Hr'g at 289:18-290:22; Village of Gilberts Ex. 2.1.] Even if The Conservancy's layout could be altered at this late date to accommodate ComEd's transmission lines, which Neumann Homes disputes, the potential reconfiguration costs together with the decline in value to the property would approach \$5,000,000.00. [Tr. of Jan. 30, 2008 Hr'g at 448:6-17, 464:5-465:15.] Considering the physical and financial investments already made and the potential future associated costs, the Modified Freeman-Galligan Route supported by Huntley would have a significant adverse impact on the continued development of The Conservancy.

Huntley's speculation that The Conservancy may not be continued or finished due to Neumann Homes' bankruptcy should be disregarded. (Huntley Brief at p. 16.) The fact that construction has been delayed at The Conservancy while Neumann Homes completes its reorganization is irrelevant to the issues before the Commission. Precisely when The Conservancy will be finished has no bearing on the annexed/under construction criterion used to evaluate which proposed route is the least cost means of satisfying the service needs of ComEd's

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<sup>1</sup> One part of The Conservancy that could not be altered is the development's retention pond. The Modified Freeman-Galligan Route would extend ComEd's power lines directly over this large body of water. Huntley simply ignores the economic, engineering, and potential liability issues surrounding this part of its proposed route. [See ComEd. Ex. 8.11; ComEd. Ex. 8.0 at 271-274.]

customers. [ComEd Ex. 8.0 at 189-194.] Further, even if Neumann Homes were to transfer The Conservancy to another developer in its reorganization, Neumann Homes has completed such a substantial amount of the work that the new developer could step in and move quickly toward developing the property. [ComEd. Ex. 8.0 at 189-194; Tr. of Jan. 30, 2008 Hr'g at 445:13-20.]

Finally, Huntley's novel claim that all references in the Proposed Order to evidence regarding Neumann Homes must be stricken because Neumann Homes presented no witnesses in the docket is meritless. (Huntley Brief at p. 29.) Neumann Homes has been an active participant throughout this process, including participating in ComEd's proposed siting analysis, prehearing conferences, and the evidentiary hearing on January 29-30, 2008. [ComEd Ex. 4.1 at App. F; Trs. of August 16, 2007, Jan. 3, 2008, Jan. 28, 2008, and Jan. 29-30, 2008 Hr'gs.] The fact that the evidence regarding Neumann Homes came into the record through witnesses and documents presented by other parties rather than by Neumann Homes does not make that evidence irrelevant or otherwise inadmissible. Indeed, to accept Huntley's argument would require the Commission to rewrite Section 200.610 of the Commission's Rules of Practice and decline to follow the rules of evidence applied in civil cases in the circuit courts of the State of Illinois. *See* 83 Ill. Adm. Code 200.610.

#### Suggested Replacement Statement

The record evidence does not support Huntley's exceptions language regarding The Conservancy. Neumann Homes submits that Huntley's language should be disregarded and the Commission's Proposed Order and Certificate of Public Convenience and Necessity dated July 11, 2008 should stand in its entirety.

### **II. Reply to the Kreutzer Road Parties' Exceptions**

The Kreutzer Road Parties also mischaracterize the record evidence in an attempt to minimize the severe physical and financial impact the Modified Freeman-Galligan Route will

have on The Conservancy. In particular, the Kreutzer Road Parties misstate the record evidence by asserting, *inter alia*, the following:

1) Neumann Homes has misrepresented or overstated the likely impact of the Modified Freeman-Galligan Route on The Conservancy (Kreutzer Brief at p. 4);

2) The Kreutzer Road Parties imply that the only construction that has taken place at The Conservancy are two model homes and two foundations (Kreutzer Brief at p. 4);

3) The Modified Freeman-Galligan Route would cross a “formerly (sic) housing development which development “has been indefinitely suspended” (Kreutzer Brief at p. 10);

4) Neumann Homes and the other parties “presented insufficient testimony to demonstrate that the property will be severely impacted by the Modified Freeman-Galligan Route, or that existing development-related infrastructure will be materially lost or compromised” (Kreutzer Brief at p. 10);

5) It is not clear that The Conservancy will be developed in the foreseeable future (Kreutzer Brief at p. 10).

As demonstrated *supra*, the Kreutzer Road Parties’ *arguments* regarding the development’s physical status and future development are belied by the record evidence before the Commission. The Conservancy, a 985 home residential development, has been fully platted and construction of a number of substantial projects has been completed. [Tr. of Jan. 30, 2008 Hr’g at 493:19-494:9; ComEd Ex. 6.0 at 69-72; ComEd Ex. 8.0 at 196-198, 267-280; ComEd Exs. 8.10, 8.11, 8.12; Tr. of Jan. 29, 2008 Hr’g at 290:4-22; Tr. of Jan. 30, 2008 Hr’g at 362:8–363:22; IndyMac Ex 1.0 at 1:22–2:2; Tr. of Jan. 30, 2008 Hr’g at 445:13-20, 460:16-21.] Further, it cannot reasonably be disputed that The Conservancy will be completed, either by Neumann Homes or another developer. [ComEd. Ex. 8.0 at 189-194; Tr. of Jan. 30, 2008 Hr’g at 445:13-20.] In sum, the evidence conclusively demonstrates that the Modified Freeman-

Galligan Route supported by the Kreutzer Road Parties would inordinately disrupt The Conservancy as well as the surrounding area. The Kreutzer Road Route, proposed by ComEd, is the least cost means of satisfying the service needs of ComEd's customers.

Suggested Replacement Statement

The record evidence does not support the Kreutzer Road Parties' exceptions language regarding The Conservancy. Neumann Homes submits that the exceptions language should be disregarded and the Commission's Proposed Order and Certificate of Public Convenience and Necessity dated July 11, 2008 should stand in its entirety.

Dated: August 22, 2008

Respectfully Submitted,

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