

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY	:	
	:	
Petition to determine the applicability of	:	No. 08-
Section 16-125(e) liability to events caused	:	
by the August 4-5, 2008 storm system.	:	

VERIFIED PETITION

Commonwealth Edison Company (“ComEd”) by its attorneys, respectfully petitions the Illinois Commerce Commission (the “Commission” or “ICC”) for a determination that it is not liable under Section 16-125(e) of the Public Utilities Act (“Act”), 220 ILCS 5/16-125 for interruptions resulting from the storm system that struck its service territory on August 4-5, 2008 (“August 4 Storm System”).

During this time, no “continuous power interruption of four hours or more” affected more than 30,000 customers. The August 4 Storm System damaged a number of ComEd facilities resulting in many different and discontinuous interruptions having different onset times, different durations, and different immediate causes, and independently affecting different areas, different customers, and different portions of ComEd’s system. These interruptions cannot be aggregated for purposes of Section 16-125(e) of the Act. However, even if the separate and distinct power interruption resulting from this storm system were aggregated, these interruptions were caused by “[u]npreventable damage due to weather events or conditions,” and, under Section 16-125(e) of the Act should neither be counted toward the 30,000 customer threshold nor result in statutory liability for ComEd.

In support of this verified Petition, ComEd states:

Background

1. ComEd is a corporation organized and existing under the laws of the State of Illinois with its principal business office in Chicago, and operating centers in DuPage and Will Counties, Illinois. ComEd supplies electricity and electric delivery services to approximately 3.8 million customers in the northern portion of Illinois. ComEd is a public utility within the meaning of Section 3-105 of the Act (220 ILCS 5/3-105) and an electric utility within the meaning of Article XVI of the Act (*see* 200 ILCS 5/16-102).

The August 4 Storm System and Resulting Unpreventable System Damage and Interruptions

2. Beginning on the evening of Monday, August 4, 2008 and into the early morning hours of Tuesday, August 5, 2008, clusters of devastating thunderstorms moved quickly through Northern Illinois, accompanied by extreme winds, large hail, extraordinary numbers of cloud-to-ground lightning strikes, and flooding. At approximately 6:00 p.m. on August 4, 2008, a mesoscale convective system – a system of thunderstorms spanning many miles, for several hours, affecting many locations – moved into far northwest Illinois and, in Winnebago and Ogle counties began to “bow.” A bow echo is a particular type of thunderstorm complex that is capable of producing widespread wind damage and possible tornados as it moves quickly over a location. The August 4 Storm System was historic in that it produced winds in excess of 90 MPH, spawning five tornados, three of which touched down in ComEd’s service territory, as well as causing widespread damage to infrastructure and property through exceptional straight-line winds. In addition to the tornadoes it spawned, the August 4 Storm System was the first severe thunderstorm of 2008 to be designated by the National Weather Service as a “Particularly

Dangerous Situation,”¹ a designation applied to only the most dangerous approximately 0.5% of severe thunderstorm systems.

3. The three tornadoes that touched down in ComEd’s service territory were located in:

- Bloomingdale, Illinois: At 7:45 pm on August 4, 2008, an EF-1 tornado touched down with wind speeds estimated to 110 MPH. Surrounding areas showed damage from straight line winds that were estimated to be greater than 76 MPH.
- Bollingbrook, Illinois: At 7:45 pm on August 4, 2008, an EF-1 tornado touched down with wind speeds of 86 to 110 MPH. This tornado created a path of 1.1 miles long and 50 yards wide. This same tornado weakened to an EF-0 tornado with wind speeds estimated to be 65 to 85 MPH. Surrounding areas experience winds between 50 and 95 MPH.
- Orland Park, Illinois: At 8 pm on August 4, 2008, an EF-0 tornado touched down briefly for a path of .25 miles long and 30 yards wide. It was immediately followed by a larger splat of microburst straight line winds.

As tornado sirens sounded, fans attending the Chicago Cubs-Houston Astros baseball game were evacuated from the stands at Wrigley Field. Areas in and around Watseka and Kankakee, Illinois experienced straight line winds of 80 to 100 MPH and radar images and damage in these areas were consistent with a microburst. Travelers at O’Hare International Airport were rushed into the shelter areas of the lower levels of the terminal buildings, flights were temporarily halted, and passengers who had already boarded planes were taken off and evacuated to the terminals’ lower levels. At Midway Airport, winds gusted to over 55 MPH; at Rockford Airport, to over 60

¹ “When the threat for damage caused by severe convection is unusually high, the Storm Prediction Center (SPC) enhances the wording of its convective watch product with the following statement:

THIS IS A PARTICULARLY DANGEROUS SITUATION

Such watches are known as ‘PDS’ watches. PDS tornado (TOR) watches are issued when the forecaster has high confidence that multiple strong (F2-F3 on the Fujita Scale) or violent tornadoes (F4-F5 on the Fujita Scale) will occur in the watch area, while PDS severe thunderstorm (SEV) watches are issued when there is a threat of a high end ‘derecho’... with widespread wind damage.” <http://www.spc.noaa.gov/publications/dean/pdswatch.pdf>.

MPH. In total, there were over 87,000 lightning strikes in ComEd's service territory, many more times than expected in a major storm system of even severe strength.

4. Damage in ComEd's service territory reflected the widespread high winds, lightning, tornadoes, and flooding. Chicago's Department of Streets and Sanitation publicly reported that it had responded to over 3,500 damaged trees, over 200 downed city wires, over 350 traffic signals that were "knocked out of whack", over 120 damaged light poles, and over 10 flooded viaducts. The National Weather Service reported damage where the tornadoes touched down, including: "a large warehouse had a wall blow out," "roof and window damage at two apartment buildings," "several homes had sections of roofing torn off, siding torn loose, trees snapped, and limbs down," "one house will likely be a total loss due to structural damage to the roof, covered porch, garage, and one wall," and "a construction trailer ... was destroyed." Among other structural damage, it was reported that the storm's high winds caused "extensive" damage to St. Charles North High School, including ripping off a section of the school's roof.

5. The August 4 Storm System caused damage to ComEd distribution facilities primarily due to the strong winds, lightning, and broken tree limbs and trunks. Strong winds damaged electrical distribution facilities not only by directly causing the failure of wires and support structures subjected to severe stress or loading, but also by causing foreign material to contact lines and other energized equipment. Lightning causes delivery system outages – including to underground facilities – both by subjecting equipment to voltages and currents that exceed its design limits and by "tripping" protective devices designed to protect equipment from even more serious damage by interrupting power flow. Moreover, winds do not need to exceed the design capabilities of distribution equipment itself in order to break tree branches, limbs, and even uproot or break trees, causing them to strike and damage the electrical system. Maintaining

normal and accepted vegetation clearances reduces the risk of contact but cannot eliminate it in the case of strong winds, especially where the winds topple trees or cause limbs or major branches to fall.

6. The August 4 Storm System caused approximately 3,200 distinct interruptions resulting from storm-related damage to specific ComEd equipment and facilities. The most common causes of equipment damage were broken tree trunks and limbs falling into or on ComEd's facilities (approximately 793 interruptions), lightning strikes (approximately 1,282 interruptions), wind/tornado damage (approximately 380 interruptions), and tree or vegetation contact (approximately 389 interruptions). The vast majority of these interruptions began during the period of storm activity, but with such storms some interruptions do occur later as limbs fall, stressed cable fails, and repair crews must temporarily interrupt service to replace damaged system components.

7. Although approximately 510,000 customers lost service at one time or another, the largest single continuous interruption affected 4,108 customers, less than 14% of the 30,001 customer minimum that an interruption must reach to trigger the statute. Moreover, even if distinct interruptions are aggregated, as has been claimed by some parties in other Section 16-125(e) proceedings currently before the Commission, a maximum of approximately 180,000 customers were subject simultaneously to interruptions with a duration of four hours or more. For these customers, the primary causes of 99.9% of these interruptions was either direct weather damage to ComEd's equipment (118,794 customers) or damage resulting from the storm system's effect on trees and other vegetation (62,587 customers).

Restoration Efforts

8. ComEd responded quickly and effectively to repair the damage and restore service to ComEd's customers. Crews, consisting of ComEd employees and outside contractors and utility workers, were dispatched efficiently and in accordance with appropriate priorities. ComEd promptly deployed 824 crews that included overhead construction crews, operating electricians (including Overhead Electrician Specialists (first responders and overhead facility trouble shooters), other construction crews, line patrollers and wire watchers, and vegetation management crews. The crews deployed included 66 native contractor crews and 144 mutual assistance crews were from Southern Illinois, Iowa, Kansas, Michigan, Missouri, Ohio, and Pennsylvania. Over half (53.8%) of all customers were restored within 8 hours, 86.7% within 24 hours, and 98.2% within 48 hours.

9. As a result of the August 4 Storm System, ComEd was required to replace a total of approximately 46 miles of wire and cable, 159 poles, and 309 distribution transformers. While final cost data is not yet available, ComEd estimates that the incremental cost of its response to the August 4 Storm System is approximately \$24 million. Prompt restoration was accomplished despite the extreme severity of the August 4 Storm System.

10. The weather events and conditions accompanying the August 4 Storm System caused unpreventable damage to ComEd's distribution system. That damage was primarily caused by the storm system's high winds (including tornadoes) and lightning, and from objects, primarily tree branches and limbs, contacting ComEd's facilities as a result of the weather conditions. ComEd's system was designed and in all material respects maintained in accordance with applicable standards and rules. The resulting interruptions were not caused by any omission or defects in ComEd's distribution system, but were unpreventable consequences of the August 4

Storm System. ComEd could not reasonably and prudently have prevented the damage to its distribution system caused by the August 4 Storm System, or the resulting interruptions.

Section 16-125(e) Does Not Apply To The Interruptions Caused By The August 4 Storm System

11. Section 16-125(e) of the Act imposes on ComEd extraordinary liability, unique in the U.S. electric industry, for actual damages without proof of negligence or fault. ComEd is also statutorily barred from recovering these damage payments in rates, again, even if ComEd is never found to have been at fault. However, that Section also confines the circumstances under which this liability may be imposed to very carefully limited and defined interruptions. It provides in part that:

In the event that more than 30,000 customers of an electric utility are subjected to a continuous power interruption of 4 hours or more that results in the transmission of power at less than 50% of the standard voltage, or that results in the total loss of power transmission, the utility shall be responsible for compensating customers affected by that interruption for 4 hours or more for all actual damages, which shall not include consequential damages, suffered as a result of the power interruption. The utility shall also reimburse the affected municipality, county, or other unit of local government in which the power interruption has taken place for all emergency and contingency expenses incurred by the unit of local government as a result of the interruption.

220 ILCS 5/16-125(e) (emph. added).

12. This limited statutory liability is triggered only when “a continuous power interruption” meets the criteria of both duration and number of customers affected. It is not imposed based on the total number of customers interrupted nor to the aggregate of multiple interruptions having different starting times, durations, causes, and locations, and affecting different groups of customers.

13. The provisions of Section 16-125(e) of the Act do not impose liability on ComEd by reason of the damage to ComEd's facilities and equipment caused by the August 4 Storm System. The discrete interruptions resulting from damage to ComEd's facilities and equipment caused by the August 4 Storm System do not constitute a single "continuous power interruption." Not one of the 3,200 distinct interruptions caused by storm damage affected anywhere near the 30,000 customer trigger required by the Act. (A schedule identifying, by ComEd region and for each interruption, the number of customers interrupted, the equipment and facilities involved, the duration, time of inception, and time of restoration is attached as Appendix A hereto. While certain data remains under review as trailing information becomes available, the Schedule fairly reflects the number, scope, and duration of the interruptions.)

14. Only by improperly combining different interruptions – interruptions that affected different customers and different equipment, in different areas of the system, at different times; that were caused by different storm-related events; and that were restored separately – could the 30,000 customer trigger be reached. In addition to being contrary to the plain language of the Act, treating distinct interruptions as if they collectively constituted a single continuous power interruption would unlawfully violate Constitutional guarantees of cost recovery, is inconsistent with the meaning of the relevant terms and concepts in the industry and other statutory provisions and Commission regulations, and inconsistent with past practice. In particular:

- a. Aggregation of interruptions would unconstitutionally subject utilities to liability without fault or possibility of rate recovery or types of interruptions that inevitably occur and that cannot be prevented by prudent and reasonable action. If all interruptions related to the failure of any equipment occasioned by a single storm system were aggregated, ComEd would expect to have several such

“interruptions” every year, regardless of how well and prudently its system is maintained. The unrecoverable liability would be potentially crippling and would have the effect of denying ComEd the ability to recover its costs of service.

- b. Aggregation of interruptions is inconsistent with the language of other subsections of Section 16-125. For example, subsection 16-125(j), which specifies data that must be collected and reported with respect to interruptions and fluctuations, makes clear that, as used in the Act, each such event is tied to “specific equipment involved in the fluctuation or interruption,” a specific time when the event occurred, a specific cause, and a specific group of affected customers. The language concerning municipal claims also anticipates that interruptions will occur in individual municipalities, not be aggregated broadly across the service territory.
- c. Aggregation of interruptions is inconsistent with the accepted meaning and concept of an interruption in the utility industry and in other regulations. The accepted and understood meaning of an “interruption” in the industry is reflected in the Commission’s explicit definition of interruption of reporting purposes, in essence that an interruption is the loss of service to a customer resulting from “the failure or operation of a single component, or the simultaneous failure or operation of physically and directly connected components of a ... transmission or distribution system ...” 83 Ill. Admin. Code 411.20. It is contrary to the accepted and understood meaning of that term to refer to the hundreds or thousands of discrete outages resulting from an event such as a storm system as if they were a single aggregated “interruption.” Moreover, it is impossible to refer

to such a collection of interruptions, having different starting and ending times, as “continuous.”

- d. Reading Section 16-125(e) as applying to aggregations of interruptions is inconsistent with the liability it applies. The harshness of liability it creates – potentially imposing liability on a utility without fault and without any opportunity of recovery of even prudent and reasonable costs – reflects the fact that the Section 16-125(e) only applies to extraordinary system failures that should not normally be expected to occur, and not to the type of dispersed damage to discrete equipment and facilities that typically accompany severe storm systems.
- e. Aggregation of hundreds of distinct storm-related interruptions is inconsistent with the purpose of Section 16-125 to induce utilities to take prudent and reasonable action to promote reliability. To read subsection (e) in such a way that it is inevitably triggered by virtually every severe storm or storm system does not result in a more reliable system. It simply penalizes ComEd for acts of nature, even when ComEd and its system performed well, as they did in this instance. Rather, Section 16-125(e) should be aimed at failures in design, construction, and maintenance of key system elements on which service to a large number of customers depend.
- f. Aggregation of interruptions is inconsistent with long standing practice under the Act. Although Section 16-125 has been effective for nearly ten years, the Commission has never sustained a complaint, or awarded statutory damages, based on the claim that Section 16-125(e) applies to the consequences of a storm

system as a whole, rather than to an individual “power interruption.” In contrast, ComEd has consistently applied that the Section, as written, to recognize that a severe storm system produces multiple interruptions at different times and places, rather than a single continuous interruption.

15. The Commission should, therefore, determine that Section 16-125(e) of the Act is not applicable to interruptions resulting from the August 4 Storm System.

Equipment Damage Resulting From The August 4 Storm System Was Unpreventable

16. Even if all of the distinct interruptions resulting from the August 4 Storm System were improperly to be aggregated and treated, under Section 16-125(e), as if they had instead been a single continuous power interruption, liability under Section 16-125(e) should not apply.

17. Section 16-125(e) provides that, even where a triggering continuous power interruption has occurred, the Commission may grant a waiver of liability if the interruption was caused by “[u]npreventable damage due to weather events or conditions.” *See* 220 ILCS 5/16-125(e)(1). Moreover, a utility seeking a waiver need not prove that it is entitled to a waiver with respect to every interrupted customer. Rather, Section 16-125(f) provides, in pertinent part, that “Customers with respect to whom a waiver has been granted by the Commission pursuant to subparagraphs (1)-(4) of subsections (e) and (f) shall not count toward the 30,000 customers required therein.” Even if the interruptions occurring as a result of the August 4 Storm System were aggregated, the facts would entitle ComEd to a waiver of liability under these provisions of the Act.

18. The damage to ComEd’s distribution system as a result of the August 4 Storm System was a direct result of weather damage that was outside of ComEd’s control. Customers

were interrupted not because of any action that ComEd took or improperly failed to take, and the damage caused by the storm system was not preventable by ComEd. The ensuing actual damages incurred by ComEd's customers, municipalities, counties, and other local governments were likewise not preventable, but were the result of that extreme weather. Good cause for such waivers clearly exist.

19. While a decision on the scope and meaning of the statute may appear to be the logical first step, ComEd believes that in this case, the Commission should first determine if customers were out of service due to circumstances that would qualify for a waiver. ComEd believes that by, in this case, addressing the waiver question first, resources of the Commission and the parties can be conserved that would otherwise be devoted to contesting issues that ComEd believes will ultimately be moot. However, should the Commission disagree, then ComEd requests that Commission find that it is not liable under Section 16-125(e)(1) of the Act both because no interruption triggering the liability occurred and, in the alternative, because ComEd would be entitled to a waiver of any liability.

WHEREFORE, Commonwealth Edison Company respectfully requests that the Commission enter an Order determining that ComEd is not liable under Section 16-125(e) of the Act (220 ILCS 5/16-125(e)) for interruptions resulting from the August 4 Storm System because the threshold requirements of that Section are not met either before or after subtraction of customers affected by interruptions with respect to which ComEd would be entitled to a waiver.

Dated: September 3, 2008

Respectfully submitted,

Commonwealth Edison Company



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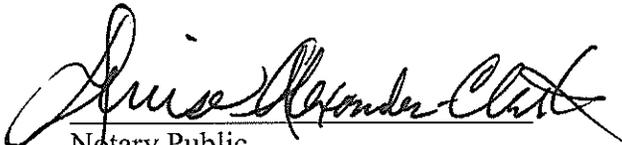
Counsel for Commonwealth Edison Company

VERIFICATION

Kevin B. Brookins, being first duly sworn, states that he is ComEd's Vice President, Distribution Operations, that has read the foregoing Petition, is knowledgeable of the facts stated therein, and the facts stated therein are true and correct to the best of his information and belief.


Kevin B. Brookins

SUBSCRIBED AND SWORN to
Before me on this 3rd day of
September, 2008.


Notary Public

