

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION APR 25 10 20 AM '00

CHIEF CLERK'S OFFICE

COMMONWEALTH EDISON COMPANY)
)
Petition for Expedited Approval of Implementation of)
A Market-Based Alternative Tariff, To Become)
Effective On or Before May 1, 2000, Pursuant to)
Article IX and Section 16-112 of the Public Utilities Act.)

Docket No. 00-0259

BRIEF ON EXCEPTIONS OF THE CITY OF CHICAGO

The City of Chicago ("City"), by its attorney, Mara S. Georges, Corporation Counsel, pursuant to the Notice of Hearing Examiner's Scheduling Ruling, issued April 13, 2000 and Section 200.830 of the Commission's Rules of Practice, 83 Ill. Adm. Code 200.830, submits its Brief on Exceptions ("Exceptions") in the above-captioned proceeding. These Exceptions are part of the dramatically expedited process defined by the Hearing Examiner's ruling. Since they are necessarily brief, the City will refer where possible to its filed Comments¹ and condense its responses to the findings and analysis of the Hearing Examiner's Proposed Order ("HEPO").

Exception One **The HEPO Does Not Find That the Proposed PPO-MI Tariff Is Just and Reasonable**

The HEPO observes that Commonwealth Edison Company's ("Edison") petition "was filed 'pursuant to Article IX and Section 16-112' of the Act." Section 16-112 is entitled "Determination of Market Value." Section 16-112(a) provides in part, "The market value to be used in the calculation of transition charges . . . shall be determined in accordance with either (I)

¹ Comments of the City of Chicago, filed electronically on April 11, 2000. The City's attempts to serve its Comments on April 10, 2000 were unsuccessful due to undetermined network problems at City facilities.

a tariff that has been filed by the electric utility . . . pursuant to Article IX of this Act”
HEPO at 26. Article IX of the Public Utilities Act,² specifically Section 9-101, requires that all
tariff rates and charges “shall be just and reasonable.” 220 ILCS 9-101.

In its Comments, the City expressed a concern that “the long-standing, near-universal
criticism of OFF prices [could] prompt approval of an alternative that may be ‘better’ than the
properly criticized NFF process, but still not ‘just and reasonable’ under Article IX of the Public
Utilities Act (PUA).”³ In such a case, Illinois electric service competition and Illinois electric
customers would suffer -- possibly for an extended period that could include the entire statutory
transition period. It appears that the expressed concern has been realized.

The HEPO notes, with apprehension, that Edison has taken the position that any market
index tariff approved could not be later investigated and modified by the Commission. That
reasonable, and justified, concern was exacerbated even for the Hearing Examiner by the
incredibly brief periods allowed for parties other than Edison to make contributions to the record
on which the decision in this case must be based.

Normally, when the Commission approves a tariff it has the statutory
authority to investigate and modify such tariff at a later date. This
authority can be particularly important when a tariff is approved on less
than 45 days’ notice.

* * * *

The Commission notes that requests for “special permission” to modify a
tariff on less than 45 days’ notice are far from unheard of at the
Commission. However, as observed above, when the Commission
approves a tariff it normally has the statutory authority to investigate and
modify such tariff at a later date HEPO at 26.

² 220 ILCS 5/9-101 *et seq.*

³ 220 ILCS 5/9-101, *et seq.*

More important, the HEPO does not find that the proposed tariff rate and charges are just and reasonable. It concludes only that: "Based on the information presented, the Commission believes it has been shown that ComEd's proposal would likely perform better in these respects than does the OFF methodology." HEPO at 27. That comparative level of performance is not the standard of the Public Utilities Act. As a matter of law, "better than" cannot be substituted for "just and reasonable."

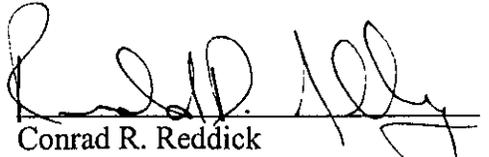
The infirmities of the HEPO's position are confirmed with the HEPO's requirement, that Edison expressly accept a sunset provision and the prospect of later modification as conditions of making what the HEPO describes as an incremental improvement -- even if the HEPO does not find it to be a "just and reasonable" substitute. HEPO at 28, 30.

[The Commission also believes there should be some means in place by which this proposal can be formally reviewed in the future, particularly considering the short review period in this case along with the substantive concerns expressed by other parties, such as IIEC's primary concern regarding the potential "thinness" of the market represented by Altrade and Bloomberg PowerMatch. The concerns raised by several parties regarding the potential for manipulation and the unregulated nature of these internet based markets further support the Commission's conclusion that there should be an additional opportunity for the Commission to formally review the merits of ComEd's proposal HEPO at 27-28.

In short, the HEPO avoids making the requisite legal determination by limiting the time Edison's proposed tariff would be in effect. While substantively this may be a credible result, it is not legally permissible. The HEPO must be modified such that some conclusion is reached regarding the justness and reasonableness of Edison's proposal.

Dated: April 24, 2000

Respectfully submitted,



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**STATE OF ILLINOIS
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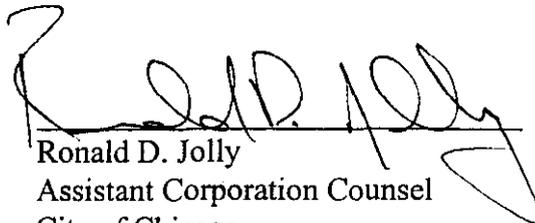
Commonwealth Edison Company)	
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NOTICE OF FILING

To: Attached Service List

Please take notice that on this date I caused to be sent to Donna M. Caton, Chief Clerk, Illinois Commerce Commission, 527 East Capitol Avenue, P.O. Box 19280, Springfield, Illinois 62794-9280, by Federal Express, the original and eleven (11) copies of the Brief on Exceptions of the City of Chicago in the above-captioned docket.

Dated: April 24, 2000



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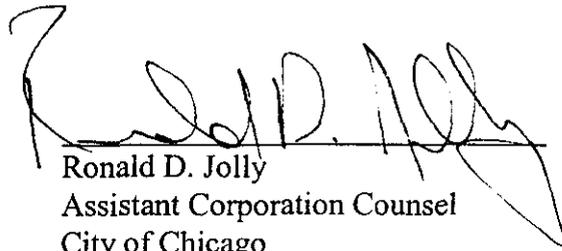
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CERTIFICATE OF SERVICE

I, Ronald D. Jolly, hereby certify that a copy of the Brief on Exceptions of the City of Chicago in the above-captioned docket was served upon the party or parties listed in the attached service list, by hand-delivery, by express mail, or by first class mail, postage prepaid, in accordance with the Rules of Practice of the Illinois Commerce Commission.

Dated: April 24, 2000



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