**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

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| COMMONWEALTH EDISON COMPANY | : | |
| | : | No. 10-0467 |
| Proposed general increase in electric rates | : | |

**VERIFIED OBJECTION OF COMMONWEALTH EDISON COMPANY TO THE PETITION TO INTERVENE OF TENASKA TAYLORVILLE, LLC**

Commonwealth Edison Company ("ComEd") objects to the Petition to Intervene filed by Tenaska Taylorville, LLC ("Tenaska"). Tenaska fails to establish an interest sufficient to support intervention. Indeed, the facts plainly show that Tenaska has no such interest. Tenaska's Petition should be denied.

## I. INTERVENTION STANDARD

A party desiring to intervene in an ongoing proceeding must establish that it has an enforceable and recognizable right directly at stake. *In re Marriage of Perkinson*, 147 Ill. App. 3d 692, 698 (4th Dist. 1986) (citing cases); *Soyland Power Cooperative v. Illinois Power Co.*, 213 Ill. App. 3d 916, 919 (4th Dist. 1991). A generalized, tentative, or theoretical interest is insufficient. *See Perkinson*, 147 Ill. App. 3d at 698. A conditional or hypothetical interest that may occur in the future is also insufficient. "Where the interests claimed by an intervenor are general interests 'which, if allowed to be asserted in [the] action, might, depending upon the holding, be advantageous to [the intervenor] at some future date,' then such interests do not entitle a party to intervene." *Id*. at 699, *quoting United Steel Workers of America, Local 5292 v. Bailey*, 29 Ill. App. 3d 392, 394 329 N.E. 2d 867 (2nd Dist. 1975). For this reason, a proper Petition must establish that outcome of the case "would have a direct and adverse effect" on the rights of petitioner. *Egyptian Electric Cooperative Assoc. v. Illinois Commerce Comm'n*, 33 Ill. 2d 339, 342-43, 211 N.E. 2d 238 (1965) ("*Egyptian*").

In addition to satisfying this substantive standard, Petitions to Intervene at the Commission are subject to a specific pleading standard. The Petition itself must contain "[a] plain and concise statement of the nature of the petitioner's interest." 83 Ill. Admin. Code § 200.200(a)(2); *see also Northern Illinois Gas Co.*, ICC Docket No. 08-0363 (ALJ Order, Aug. 20, 2008) (denying intervention of prospective market participant; attached hereto). As demonstrated below, Tenaska's Petition is deficient in both respects. It should be denied.

## II. TENASKSA MAKES NO SHOWING WARRANTING INTERVENTION

Tenaska cannot begin to explain how this proceeding to establish local retail distribution rates for ComEd's northern Illinois customers could be "likely" to have a "significant" effect on energy markets in southern Illinois, let alone how this case could directly prejudice Tenaska's enforceable and recognized rights. The plain facts[1] demonstrate that it will not:

1. This Docket concerns ComEd's delivery rates for local distribution service. It does not concern rates for the use of ComEd's transmission system, nor ComEd's procurement of supply.
2. Tenaska is not a customer of ComEd. Tenaska does not operate in ComEd's service territory.
3. The proposed generation facility is also not in ComEd's service territory or in its load zone.
4. The proposed generation facility, if completed, will not take any retail or distribution service from ComEd.
5. The proposed generation facility, if completed, will not interconnect with ComEd distribution facilities.

[1] This Objection is verified by a ComEd officer familiar with ComEd's distribution rates and the operation of the energy markets in Illinois. Tenaska's petition is verified by an out of state attorney with no such level of knowledge or experience.

6. The proposed generation facility, if completed, will not pay ComEd distribution rates.

7. The proposed generation facility is not even in the same Regional Transmission Organization footprint as ComEd. The energy market where the generator would be located is operated by MISO; ComEd is part of PJM.

8. ComEd's proposed distribution rates are supply neutral, *i.e.*, they apply equally to retail customers' use of delivery services regardless of the source of supply.

Not surprisingly, Tenaska's Petition does not allege prejudice to any of its rights or legally protected interests. Tenaska alleges only that it is the "Managing Member" of another entity that, in turn, is developing a potential generation facility "in Christian County, Illinois." Petition, ¶ 2. Tenaska does not allege that the development of its affiliate's generating project will be prejudiced by ComEd's delivery rates. Even Tenaska's allegations concerning "energy markets" are tentative and conditional. Tenaska claims only that "it is *likely*" that the proceeding "*could* have" an impact on the southern Illinois energy market in which the generator, *if built*, would "participate." [2] Petition, ¶ 3 (emphasis added). Even were it not fatally indefinite and hypothetical, such a generalized allegation of an effect on an entire market does not support Tenaska's particular intervention.

There is ample precedent for denial of intervention before the Commission in circumstances such as this. The Illinois Supreme Court has held that a party who alleged far more direct interests – but, like Tenaska, could not allege that the outcome would directly and adversely affect its rights – was properly denied intervention. In *Egyptian*, the Court considered three bases for a co-op's intervention into a transmission line extension proceeding: (1) as a

[2] This claim appears novel, even for Tenaska. A review of Tenaska's lengthy submissions both to the Commission and Illinois General Assembly shows that Tenaska has never claimed that its ability to construct or operate the proposed generator is somehow dependent on the distribution rates charged by ComEd.

competitor, the co-op alleged it had an existing agreement to sell Illinois Power energy that it would instead be acquiring via the line extension; (2) the co-op was a consumer of energy supplied by Illinois Power; and (3) the co-op owned land over which Illinois Power would construct the line. *See Egyptian*, 33 Ill. 2d at 341-42. Despite even these concrete ties, intervention was properly denied, because the order in the case would not have a "direct and adverse effect" upon the co-op's rights. *Id*. at 342-43.

## III. CONCLUSION

Tenaska has failed to submit a "plain and concise statement" showing that that outcome of the case will have a direct and adverse effect on its rights. Indeed, the facts prove otherwise. Tenaska's Petition to Intervene should, therefore, be denied.

Dated: December 22, 2010.

Respectfully submitted,

By:_____
One of the attorneys for
Commonwealth Edison Company

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STATE OF ILLINOIS )
) SS.
COUNTY OF COOK )

**VERIFICATION**

I, Ross C. Hemphill, having been duly sworn, hereby depose and state, under oath and based on my personal knowledge, as follows:

I am Vice President, Regulatory Policy & Strategy, of Commonwealth Edison Company ("ComEd"). As Vice President, Regulatory Policy and Strategy, I have executive responsibility for the development of ComEd's regulatory policies and strategies for ComEd's distribution business and for ComEd's distribution rates. This responsibility includes development of ComEd's distribution tariffs and rate proposals in this proceeding. I am also familiar with the proposals of Tenaska and its affiliates to construct a generation facility in Illinois and have reviewed Tenaska's submissions to the Commission concerning the project.

I have read the foregoing Objection to the Petition to Intervene, I am familiar with the facts and matters set forth therein, and that they are true and correct to the best of my information and belief.

Ross C. Hemphill, Ph.D.

Subscribed and Sworn to
before me this 22nd day
of December, 2010.

Notary Public

"OFFICIAL SEAL"
Mamie Takagi
Notary Public, State of Illinois
Commission Expires 6/6/2012

My Commission Expires: 6-6-2012