



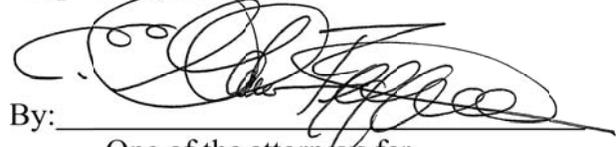
5. On December 29, 2010, Tenaska filed a response that included no discussion of the particular “energy market” about which Tenaska originally made claims. Indeed, the words “energy market” appear nowhere in its response. Instead Tenaska filed nine pages of allegations largely concerning statutory provisions not even mentioned in its Petition.

6. ComEd’s response to these new allegations is contained in the attached Reply.

WHEREFORE, ComEd respectfully requests that its motion be granted and that the proposed Reply attached hereto as Exhibit A be deemed filed *instanter*.

Dated: January 5, 2011.

Respectfully submitted,



By: \_\_\_\_\_  
One of the attorneys for  
Commonwealth Edison Company

Thomas S. O’Neill  
Senior Vice President & General Counsel  
Commonwealth Edison Company  
440 S. LaSalle Street  
Suite 3300  
Chicago, IL 60605  
thomas.oneill@comed.com

Richard G. Bernet  
Eugene Bernstein  
Bradley R. Perkins  
10 S. Dearborn, Suite 4900  
Chicago, IL 60603  
(312) 394-5400  
richard.bernet@exeloncorp.com  
eugene.bernstein@exeloncorp.com  
brad.perkins@exeloncorp.com

E. Glenn Rippie  
John E. Rooney  
John P. Ratnaswamy  
Carla Scarsella  
Rooney Rippie & Ratnaswamy LLP  
350 W. Hubbard Street  
Suite 430  
Chicago, Illinois 60654  
(312) 447-2800  
glenn.rippie@r3law.com  
john.rooney@r3law.com  
john.ratnaswamy@r3law.com  
carla.scarsella@r3law.com

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

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

**COMMONWEALTH EDISON COMPANY’S VERIFIED REPLY  
IN SUPPORT OF COMED’S VERIFIED OBJECTION TO THE  
PETITION TO INTERVENE OF TENASKA TAYLORVILLE, LLC**

Commonwealth Edison Company (“ComEd”) states for its Verified Reply in Support of its Objection to the Petition to Intervene of Tenaska Taylorville, LLC (“Tenaska”):

Tenaska has failed to plead or establish a factual or legal basis for intervention in ComEd’s delivery service rate case. Tenaska’s required “plain and concise statement of the nature of [its] interest” (83 Ill. Admin. Code § 200.200(a)(2)) was a claim that it “may be materially and adversely affected” because “that the outcome of this proceeding could have a significant impact on the Illinois energy market in which [its affiliate] Christian County Generation, L.L.C. [“CCG”] will participate.” Petition, ¶ 3. ComEd’s Verified Objection (“Objection”) demonstrated that allegation to be both unsupported and implausible. Tenaska’s Response to ComEd’s Objection (“Response”) alleges three entirely new interests. Not only were none of these supposed interests alleged in Tenaska’s Petition, they too fail to meet the required legal standard and/or rest on premises that are simply inaccurate.

**Purchases of CCG Energy Under Current Law**

Tenaska asserts that it has an interest in ComEd’s delivery rates because those rates could potentially affect the share of the output of CCG’s plant that ComEd would be required to purchase under state law. Tenaska points to the fact that a cap on those purchases, imposed under Section 1-75(d)(2) of the Illinois Power Agency Act (“IPA Act”), in part depends on those

rates. 20 ILCS 3855/1-75(d)(2). However, as Tenaska admits, that cap has no effect on the amount of value of CCG's sales under state law. Any sales to ComEd that might theoretically be lost by the cap are made up dollar for dollar and kwh for kwh by sales to uncapped buyers. Specifically, under Section 16-115(d)(5)(v) of the Public Utilities Act ("PUA"), the remaining output is sold to other purchasers whose obligations are not capped. Tenaska, in short, cannot allege that CCG's sales or revenues will be affected in any way by the outcome of this case.

Tenaska also argues that CCG cares about the *share* of its sales that are made to ComEd as opposed to other buyers. *See* Response, ¶¶ 4-5. But, Tenaska has no legally cognizable interest in that share, as is required. Neither the PUA nor IPA Act confers any right on CCG, let alone on Tenaska, to prefer compulsory sales to utilities over compulsory sales to others. Indeed, Paragraph 4 of Tenaska's Response does not claim that Tenaska's interest is related to any legal right, but rather to a desire to promote the overall acceptance of [CCG's new coal plant] by electricity consumers and other interested parties in the State of Illinois." There are fatal flaws in this allegation beyond its vagueness. First, Tenaska has no legally enforceable right in "consumer acceptance." As Tenaska admits, CCG's sales are a function of mandatory state law, not consumer acceptance. At best, Tenaska alleges a "political or programmatic" interest. Under Illinois law, such an interest does not support a right to intervene. *Sierra Club, Inc. v. Environmental Protection Agency*, 358 F.3d 516, 518 (7<sup>th</sup> Cir. 2004). Moreover, Tenaska does not allege why ARES consumers would be any more or less tolerant of high-priced CCG supply than would consumers buying their energy from utilities. The share of energy sold to one or the other has no bearing on the degree to which consumers overpay.<sup>1</sup>

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<sup>1</sup> Tenaska also claims an interest in reducing the "overall dollar and percentage increases" (Response, ¶ 5) caused by the compulsory sale of CCG's high-priced energy to ComEd's customers. That claim, too, alleges no legally cognizable right of Tenaska in ComEd's rates or costs.

Finally, Tenaska cannot show – or even allege – any likelihood that the delivery rates set in this case will remain in effect “until 2015 or 2016,” when Tenaska predicts CCG could begin operating its plant. Response, ¶ 3. As ComEd pointed out in its Objection, without response by Tenaska, a conditional or hypothetical interest that may occur in the future is insufficient to support intervention. *See* Objection, p. 1.

### **Cost of Service Methodology**

Tenaska next alleges that it is interested in ComEd’s rate case because the Commission will, in the future, apply “a cost of service methodology” to CCG. Although the costs at issue in this case have nothing at all to do with CCG’s costs, Tenaska claims that because a cost of service study is at issue in this case means that “determinations, in this rate case, may be cited as precedential, or at least as persuasive,” in a future CCG case. Response, ¶ 6. Not only is this claim wholly speculative, concern over legal precedent is insufficient to support intervention. As noted in ComEd’s Objection (again, without response by Tenaska), an intervenor must establish that outcome of the case “would have a direct and adverse effect” on its rights. *Egyptian Electric Cooperative Assoc. v. Illinois Commerce Comm’n*, 33 Ill. 2d 339, 342-43 (1965). Hypothetical concern over potential citation of decision in connection with unrelated facts comes nowhere near meeting that test.

### **Future Legislation**

Finally, Tenaska claims that CCG might be affected at some time in the future if proposed legislation becomes law. Response, ¶ 7. Clearly legislation not yet enacted cannot create legally cognizable rights. Moreover, the prospect of the General Assembly adopting, let alone the Governor signing into law, a proposed bill, without material amendment, is highly uncertain. As ComEd pointed out in its Objection (once more, without response by Tenaska), “a

conditional or hypothetical interest that may occur in the future is also insufficient” to support intervention. Objection, p. 1.

\* \* \* \* \*

In short, Tenaska failed to submit a “plain and concise statement” showing that that outcome of the case will have a direct and adverse effect on its legal rights. Tenaska’s Petition to Intervene should, therefore, be denied.

Dated: January 5, 2011.

Respectfully submitted,



By: \_\_\_\_\_  
One of the attorneys for  
Commonwealth Edison Company

Thomas S. O’Neill  
Senior Vice President & General Counsel  
Commonwealth Edison Company  
440 S. LaSalle Street  
Suite 3300  
Chicago, IL 60605  
thomas.oneill@comed.com

Richard G. Bernet  
Eugene Bernstein  
Bradley R. Perkins  
10 S. Dearborn, Suite 4900  
Chicago, IL 60603  
(312) 394-5400  
richard.bernet@exeloncorp.com  
eugene.bernstein@exeloncorp.com  
brad.perkins@exeloncorp.com

E. Glenn Rippie  
John E. Rooney  
John P. Ratnaswamy  
Carla Scarsella  
Rooney Rippie & Ratnaswamy LLP  
350 W. Hubbard Street  
Suite 430  
Chicago, Illinois 60654  
(312) 447-2800  
glenn.rippie@r3law.com  
john.rooney@r3law.com  
john.ratnaswamy@r3law.com  
carla.scarsella@r3law.com

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

**VERIFICATION**

I, William P. McNeil, having been duly sworn, hereby depose and state, under oath and based on my personal knowledge, as follows:

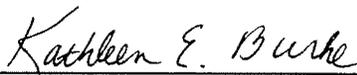
I am Vice President – Energy Acquisition for Commonwealth Edison Company (“ComEd”) and have responsibility for managing power procurement requirements to serve ComEd’s retail and wholesale load obligations. I am also familiar with the proposals of Tenaska and its affiliates to construct a generation facility in Illinois and ComEd’s obligations with respect to purchases from the generator proposed to be constructed by Tenaska’s affiliate.

I have read the foregoing Reply supporting ComEd’s 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.

FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
William P. McNeil

SUBSCRIBED AND SWORN to before me  
this 5<sup>th</sup> day of January, 2011

  
\_\_\_\_\_

Notary Public

