

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY :
: No. 12-0298
Petition for Statutory Approval of a Smart Grid :
Advanced Metering Infrastructure Deployment :
Plan pursuant to Section 16-108.6 of the Public :
Utilities Act :

**COMMONWEALTH EDISON COMPANY’S VERIFIED
MOTION TO STRIKE OR, IN THE ALTERNATIVE, OPPOSITION
TO THE PETITION TO INTERVENE OF THE TECHNOLOGY NETWORK**

On May 30, The Technology Network (“TechNet”), a California entity that had not previously participated in this Docket filed a Petition to Intervene alleging as its required “plain and concise statement” of interest only the vague claim that its unnamed members “may be materially affected by ComEd’s smart grid plan.” Petition to Intervene (“Pet.”) at 3. As a practical matter, however, the present purpose of the intervention is as a vehicle to attempt to file an 8-page “comment” making a number of factual and policy claims, without citation to the record (in several cases, expressly based on extraneous documents not in evidence) and without any opportunity to cross examine the proponent of those recommendations.

I. THE IMPROPER COMMENT

This is a docketed proceeding, conducted under the rules of evidence and the Illinois Administrative Procedure Act (“IAPA”), 5 ILCS Act 100. The IAPA and constitutional principles both require that due process protections be respected, including the right confront the evidence offered and cross-examine party’s witnesses. *See Balmoral Racing Club v. Ill. Racing Bd.*, 151 Ill,2d 367 (1992). The IAPA requires that parties be permitted to both present *and respond to* evidence (5 ILCS 100/10-25(b)) and assures parties the right to “conduct cross-

examination required for a full and fair disclosure of the facts....” 5 ILCS 100/10-40(b). The Illinois Supreme Court has made clear that these guarantees have Constitutional status, ruling that “The opportunity to cross-examine witnesses and to inspect the evidence offered against a party have both been determined to be part of guaranteeing the exercise of due process before an administrative tribunal.” *Balmoral*, 151 Ill.2d at 408.

Here, TechNet has not submitted a brief citing to the evidence in the record and presented at hearing, but rather a statement of policies that TechNet supports based on many assertions of fact made in the document itself. Candidly, TechNet does not call the document a brief, but more accurately labels it a “comment.”

ComEd has had no opportunity to cross examine the proponent of this policy nor has the material to which it points been admitted into the record. Moreover, the schedule for this docket, keeping with the contested nature of the proceeding and respecting due process protections, does not allow for the submission of comments. TechNet’s Comment should, therefore, be rejected.

II. INTERVENTION STANDARD

In the alternative, TechNet’s Petition to Intervene should be denied. The rule governing intervention in Illinois Commerce Commission (“ICC”) proceedings is Part 200.200, which states in pertinent part as follows:

“a) Petitions to intervene shall contain:

...

2) A plain and concise statement of the nature of the petitioner's interest;

...

e) Except for good cause shown, an intervenor shall accept the status of the record as the same exists at the time of the beginning of that person's intervention. Subject to Section 200.850, any intervenor shall be allowed to comment in briefs and oral arguments on any matter addressed in the proceeding, whether before or after his

intervention; and such intervenor shall be bound by rulings and orders theretofore entered.”

83 Ill. Adm. Code 200.200 (emphasis added).

TechNet has neither respected the status of the proceeding, as required by 200.200(e), nor concisely identified its interest. Specifically regarding Part 200.200(e), a party desiring to intervene in an ongoing proceeding, especially at such a late stage in a proceeding, must not intervene for the purpose of submitting documents not provided for by the schedule. TechNet, however, does just that. Moreover, TechNet, as noted above, neither discusses how or why it could be affected by the outcome of this proceeding, nor even discloses who its members are. Indeed, TechNet only asserts that its members “may be” affected. The Commission -- and the parties -- are entitled to be able to consider the views of TechNet in light of its interest. If it does not state that interest, it has not only failed to comply with the rules governing intervention, but has materially prejudiced ComEd and the Commission.

III. CONCLUSION

TechNet has failed to accept the record as it exists and failed to explain why it should be allowed at such a late juncture to intervene. It also does not seek to participate in the proceeding in accordance with the Commission’s rules and applicable process by only submitting comments. TechNet’s Comments should be stricken as they contain facts not in evidence and have not been subject to discovery and the opportunity for cross examination. In the alternative, the Commission should deny the intervention.

Dated: June 1, 2012

Respectfully submitted,

COMMONWEALTH EDISON COMPANY

By:  _____

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK) VERIFICATION

I, Louis Harris, having been duly sworn, hereby depose and state, under oath and based on my personal knowledge, as follows:

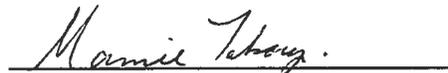
I am Director, Regulatory Strategy & Services, of Commonwealth Edison Company ("ComEd"). I am also familiar with the Petition to Intervene and Comments of TechNet to the Commission concerning ICC Docket 12-0298.

I have read the foregoing pleading, 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.



Louis Harris

Subscribed and Sworn to
before me this 1st day
of June, 2012.



Notary Public

My Commission Expires: 6/6/12

